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Texas Register

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Highlights

- ★ The State Property Tax Board adopts on an emergency basis a new section concerning the appraisal of public access airport property; effective date - June 9 page 2306
- ★ Comptroller of Public Accounts proposes amendments to sections concerning refunds of motor vehicle sales and use tax; proposed date of adoption - July 16 page 2311
- ★ Texas Department of Health proposes amendments to a section concerning control of radiation; proposed date of adoption - July 31 page 2309

How To Use the Texas Register

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice a week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1982 with the exception of January 5, April 27, November 16, November 30, and December 28, by the Texas Register Division, Office of the Secretary of State, 201 East 14th Street, P.O. Box 13824, Austin, Texas 78711-3824, (512) 475-7886.

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Information Available: The nine sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register Division six months after proposal publication date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 beginning page of the section. The division also publishes monthly, quarterly, and annual indexes to aid in researching material published.

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which

that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: page 2 in the lower left-hand corner of this page is written: "7 TexReg 2 issue date," while on the opposite page, in the lower right-hand corner, page 3 is written "issue date 7 TexReg 3."

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

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules currently being published by Shepard's/McGraw-Hill, in cooperation with this office.

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

1 indicates the title under which the agency appears in the *Texas Administrative Code* (a listing of all the titles appears below);

TAC stands for the *Texas Administrative Code*; **§27.15** is the section number of the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).

Latest Texas Code Reporter
(Master Transmittal Sheet): No. 6, July 81

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Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule may become effective immediately upon filing with the Texas Register Division, 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.

An agency must submit written reasons, published in the *Register*, for emergency action on a rule. The submission must also include a statement of the legal authority under which the emergency action is promulgated and the text of the emergency adoption. Following each published emergency document is certification information containing the effective and expiration dates of the action and a telephone number from which further information may be obtained.

Symbology in amended 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 34. PUBLIC FINANCE Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter A. General Rulings

34 TAC §3.5

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of new §3.5 for a 60-day period, effective June 25, 1982. The text of the new rule, as adopted on an emergency basis, was published in the March 2, 1982, issue of the *Texas Register* (7 TexReg 843).

Issued in Austin, Texas, on June 9, 1982.

TRD-824779 Bob Bullock
Comptroller of Public Accounts

Effective Date: June 25, 1982
Expiration date: August 24, 1982
For further information, please call (512) 475-7000.

Part VII. State Property Tax Board Chapter 161. Valuation Procedure

34 TAC §161.10

The State Property Tax Board adopts on an emergency basis new §161.10 which adopts by reference a manual for appraising public access airport property. The "Guidelines for Appraisal of Public Access Airport Property" contains application verification procedures and valuation methods and principles to be used when appraising property of this type.

This rule and the corresponding guidelines are necessary to enable chief appraisers and appraisal review boards to fulfill their statutory duties of identifying, appraising, and reviewing this type of property for the 1982 tax year. Section 41.12, Property Tax Code, requires that the appraisal review board complete its review of the appraisal records, approve the records, and submit a list of its approved changes in the records to the chief appraiser by July 20 or as soon thereafter as practical. A later adoption date would not provide those persons concerned with timely guidelines.

This section is being proposed for adoption on an emergency basis pursuant to Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5(d) and Property Tax Code, §23.93(e), which provides the State Property Tax Board with the authority to promulgate rules specifying the methods to apply and the procedures to use in appraising land under this section.

§161.10. *Appraisal of Public Access Airport Property.* The State Property Tax Board adopts by reference "Guidelines for the Appraisal of Public Access Airport Property" to be effective July 9, 1982. This document is published by and available from the State Property Tax Board, 9501 IH 35 North, P.O. Box 15900, Austin, Texas 78761.

Issued in Austin, Texas, on June 9, 1982.

TRD-824782 Kenneth E. Graeber
Executive Director
State Property Tax Board

Effective date: June 9, 1982
Expiration date: October 7, 1982
For further information, please call (512) 837-8622.

Thirty days before an agency intends to permanently adopt a new or amended rule, or repeal an existing rule, it must submit a proposal detailing the action in the *Register*. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. A public hearing on the proposal may also be granted if such a procedure is requested by a governmental subdivision or agency, or by an association consisting of at least 25 members.

Unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice, the proposal may not be adopted until 30 days after publication. The document, as published in the *Register*, must include a brief explanation of the proposed action; a fiscal statement indicating effect on state or local government; a statement explaining anticipated public benefits and possible economic costs to individuals required to comply with the rule; a request for public comments; a statement of legal authority under which the proposed rule is to be adopted (and the agency's interpretation of the legal authority); the text of the proposed action; and a certification statement. The certification information which includes the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

Symbology in amended 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.

Proposed Rules

TITLE 22. EXAMINING BOARDS Part III. Texas Board of Chiropractic Examiners Chapter 71. Application and Applicants

22 TAC §71.3

The Texas Board of Chiropractic Examiners proposes amendments to §71.3, concerning qualifications of applicants.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be to reconcile the existing board rules with the current state statute. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, Executive Secretary, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The amendments are proposed under Texas Civil Statutes, Article 4512b, which provides Texas Board of Chiropractic Examiners with the authority to delete any rules in conflict with the Texas Chiropractic Act.

§71.3. *Qualifications of Applicants.*

[(a) All applicants shall have attained the age of 21 years, shall be of good moral character, and shall be graduates of bona fide reputable chiropractic schools.]

(a)[(b)] All applicants shall have completed the number of college courses and credits required by Texas Civil Statutes, Article 4512b, §10, and Article 4590c-1.

(b)[(c)] All applicants shall submit evidence for the executive secretary to determine that an applicant has met all the requirements specified in these sections and any other information reasonably required by the board.

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

Issued in Austin, Texas, on June 8, 1982.

TRD-824761

Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 16, 1982
For further information, please call (512) 453-1703.

22 TAC §71.11

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Board of Chiropractic Examiners, 5555 North Lamar, Building H-103, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas Board of Chiropractic Examiners proposes the repeal of §71.11, concerning notification of grades.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the proposal will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the proposal.

Ms. Parsons has also determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be enforcement of the current statutes regarding the practice of chiropractic, thereby assuring the public safety and well-being. There is no economic cost to individuals who are required to comply with the proposal.

Comments on the proposal may be submitted to Edna A. Parsons, Executive Secretary, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The repeal is proposed under Texas Civil Statutes, Article 4512b, and §5, Senate Bill 109, which provides the Texas Board of Chiropractic Examiners with the authority to repeal any rules in conflict with the Chiropractic Act of Texas.

§71.11. Notification of Grades.

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 June 8, 1982.

TRD-824762 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 16, 1982
For further information, please call (512) 453-1703.

Ms. Parsons has also determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be the deletion of board rules in conflict with current statutes, and enforcement of the current statutes regarding the practice of chiropractic, thereby assuring the public safety and well-being. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Edna A. Parsons, Executive Secretary, 5555 North Lamar, Building H-103, Austin, Texas 78751.

The amendments are proposed under Texas Civil Statutes, Article 4512b, and §5, Senate Bill 109, 67th Legislature, which provides the Texas Board of Chiropractic Examiners with the authority to delete any rules in conflict with the Chiropractic Act of Texas.

§73.3. Refresher Courses.

(1) (No change.)

[(2) Active status renewal. Any licensee not in active practice may pay the yearly renewal fee without refresher course after making affidavit to the board certifying his inactivity. Before active practice may be resumed, approved certificate of refresher course work must be presented. This certificate must show that the licensee has completed at least a one-week period of attendance at a chiropractic school or college recognized by the Texas Board of Chiropractic Examiners, for each year or fraction thereof that the license was inactive.]

[(2) [(3)] Proof of out-of-state refresher work. It shall be the responsibility of the licensee to submit proof of attendance of out-of-state refresher work for the purpose of license renewal.

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 June 8, 1982.

TRD-824 /63 Edna A. Parsons
Executive Secretary
Texas Board of Chiropractic
Examiners

Proposed date of adoption: July 16, 1982
For further information, please call (512) 453-1703.

Chapter 73. Licenses and Renewals

22 TAC §73.3

The Texas Board of Chiropractic Examiners proposes amendments to §73.3, concerning refresher courses.

Edna A. Parsons, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.



TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 289. Occupational Health
and Radiation Control
Control of Radiation

25 TAC §289.1

The Texas Department of Health proposes an amendment to §289.1, concerning the control of radiation. Part 21, entitled, "Standards for Protection Against Radiation," will be amended by the addition of §21.306 covering disposal of specific waste. Section 21.306 is intended to allow radioactive material licensees to dispose of limited amounts of hydrogen-3 (tritium) and carbon-14 in biomedical waste, specifically in liquid scintillation media and animal carcasses, without regard to its radioactivity. Section 21.306 will not relieve licensees from complying with other applicable regulations of federal, state, or local governments regarding the disposal of nonradioactive materials. The U.S. Nuclear Regulatory Commission, which has determined that the exemption of biomedical waste at the levels indicated will have no adverse effect on the environment, has adopted §21.306. The commission is urging the states to adopt this rule in order to alleviate some transportation and burial site problems involved with low-level radioactive waste.

Stephen Seale, chief accountant III, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Seale has also determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be that the rule will permit licensees greater leeway in disposing of liquid scintillation media and animal carcasses containing tracer amounts of some radioactive materials. Most licensees currently dispose of these items by sending them to a radioactive waste burial site, at ever increasing cost. There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Ruth E. McBurney, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 835-7000. Public comment will be received for 30 days following publication of this amendment in the *Texas Register*. In addition, there will be a public hearing on the proposed rule on Thursday, June 22, 1982, at 10 a.m., in the conference room of the Bureau of Radiation Control, 1212 East Anderson Lane, Austin.

The amendment is proposed under Texas Civil Statutes, Article 4590f, §4(d)(3), which provides the Texas Department of Health with the authority to adopt rules relating to control and transport of sources of radiation in the State of Texas.

§289.1. Control of Radiation Generally.

(a) The Texas Department of Health adopts by reference the rules contained in the department's document entitled, "Texas Regulations for the Control of Radiation" which consists of the following parts and the dates they have been amended:

- (1) (No change.)
- (2) Part 21, "Standards for Protection Against Radiation," as amended in **September 1982** [October 1981].
- (3)-(12) (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 June 8, 1982.

TRD-824780 Robert A. MacLean, M.D.
 Deputy Commissioner
 Professional Services
 Texas Department of Health

Proposed date of adoption: July 31, 1982
 For further information, please call (512) 458-7236.

TITLE 31. NATURAL RESOURCES
AND CONSERVATION
Part III. Texas Air Control Board
Chapter 115. Volatile Organic
Compounds

Compliance and Control Plan
Requirements in Brazoria, Dallas, El
Paso, Galveston, Gregg, Harris,
Jefferson, Nueces, Orange, Tarrant,
and Victoria Counties

31 TAC §115.421

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, or in the Texas Register Division office, 503E Sam Houston Building, Austin.)

The Texas Air Control Board (TACB) proposes the repeal of §115.421, concerning superseded rules. Section 115.421 is redundant as written. Reference to dates of previous regulations is not necessary and may serve to confuse the reader of the actual intent of the section. This section will be proposed in this issue with improved language clarity.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations has determined that the benefit that will accrue to the public and to the state will be in the form of clearer and more easily understood regulatory language. There is no identifiable cost to the public.

Public hearings on this proposal are scheduled for the following times and places: July 13, 1982, 3 p.m., and 7 p.m., Environmental Pollution Control Laboratories auditorium, 7411 Park Place, Houston; and July 12, 1982, 7 p.m., Texas Air Control Board auditorium, 6330 U.S. Highway 290 East, Austin.

Copies of the proposed rule changes are available at the central office of the Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723, and at all Texas Air Control Board regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. Written testimony received by July 20, 1982, will be included in the hearing record. The TACB would appreciate receiving 20 copies of testimony prior to the hearings, where possible. Written comments should be sent to the Hearing Examiner, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723.

This repeal is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board 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 Texas Air Control Board makes.

§115.421. Superseded Rules.

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 June 8, 1982.

TRD-824773 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 16, 1982
For further information, please call (512) 451-5711,
ext. 354.

The Texas Air Control Board proposes new §115.421, concerning compliance dates. This new section will replace the old §115.421, concerning superseded rules, the repeal of which is simultaneously proposed. The proposed new section will clarify the compliance requirements for certain sections in this chapter. There should be no substantive change in the requirements of the new section.

Bennie Engelke, deputy director for administrative services, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to either state or local government as a result of enforcing or administering the rule.

Roger Wallis, deputy director for standards and regulations, has determined that for each year of the first five years the rule as proposed is in effect, the public

benefit anticipated as a result of enforcing the rule as proposed would be clearer and more easily understood regulatory language. There are no anticipated additional costs to the public or to persons required to comply with the rule as proposed.

Public hearings on this proposal are scheduled for the following times and places: July 13, 1982, 3 p.m., and 7 p.m., Environmental Pollution Control Laboratories auditorium, 7411 Park Place, Houston; and July 12, 1982, 7 p.m., Texas Air Control Board auditorium, 6330 U.S. Highway 290 East, Austin.

Copies of the proposed rule changes are available at the central office of the Texas Air Control Board, U.S. Highway 290 East, Austin, Texas 78723, and at all Texas Air Control Board regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. Written testimony received by July 20, 1982, will be included in the hearing record. The Texas Air Control Board would appreciate receiving 20 copies of testimony prior to the hearings, where possible. Written comments should be sent to Hearing Examiner, Texas Air Control Board, 6330 U.S. Highway 290 East, Austin, Texas 78723.

This new section is proposed under Texas Civil Statutes, Article 4477-5, which provides the Texas Air Control Board 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 Texas Air Control Board makes.

§115.421. Compliance Dates. Final compliance and control plan submittal dates are given in each subchapter if the final compliance date of any provision is after the date of adoption of the current revision to Chapter 115 of this title. If the compliance dates are not specified for any provision, the compliance date is past and all affected persons must be and remain in compliance with the provision.

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 June 8, 1982.

TRD-824774 Bill Stewart, P.E.
Executive Director
Texas Air Control Board

Proposed date of adoption: July 16, 1982
For further information, please call (512) 451-5711,
ext. 354.



TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public
Accounts
Chapter 3. Tax Administration
Subchapter F. Motor Vehicles Sales and
Use Tax Division

34 TAC §3.77

The Office of the Comptroller of Public Accounts proposes to amend §3.77, concerning refunds. The purpose of the amendment is to delineate which payments made under protest may be made to the county tax assessor-collector and which must be made directly to the Office of the Comptroller of Public Accounts. The proposed rule further reflects the statutory amendment made by Senate Bill 371 which shortens the period for requesting a refund from seven years to four years and also provides for interest on refunds. The rule has also been retitled.

Bill Allaway, director of revenue estimating, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Allaway also has determined there is no anticipated economic cost or benefit to persons who are required to comply with the rule as proposed.

Public comment on the amendment is invited and should be submitted in writing to Richard Montgomery, P.O. Box 13528, Austin, Texas 78711.

The amendments are proposed under the authority of Texas Tax Code §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules and regulations relating to the enforcement and administration of the tax code.

§3.77. Refunds and Payments Made Under Protest.

(a) Refund of motor vehicle sales or use tax paid in error.

(1) Refund from county tax assessor-collector.

Any person may request from the county tax assessor-collector a refund of motor vehicle sales or use tax which he paid to the tax assessor-collector in error.

(A) If the tax has not been remitted to the comptroller by the tax assessor-collector and the tax assessor-collector still has all five copies of the Form 31 tax receipt, he must void all five copies of the Form 31 showing the tax had been paid and [If the tax assessor-collector has not yet remitted the tax to the comptroller, he must void all five copies of the Form 31 tax receipt showing the tax that had been paid,] then refund the portion of the tax which was paid in error. A second Form 31 tax receipt must then be prepared to document the correct amount of tax collected.

(B) If the tax has already been remitted to the comptroller by the tax assessor-collector or if the tax assessor-collector no longer has all five copies of the Form 31 tax receipt, [If the tax assessor-collector has already remitted the tax to the comptroller,] the taxpayer must

apply directly to the comptroller for a refund. (See paragraph (2) of this subsection.)

(2) Refund from the comptroller. The [any] person who paid any motor vehicle sales or use tax in error may request from the comptroller a refund of the [motor vehicle sales or use] tax which has been remitted to the comptroller [in error].

(A) (No change.)

(B) A request for refund of motor vehicle sales or use tax must be made within four [seven] years of the due date [of payment] of the tax or within six months after any deficiency determination becomes final, whichever period expires later [or within six months from the date of any overpayment made to satisfy such deficiency determination].

(C) (No change.)

(D) If the claim is granted, only that portion of the tax which has been remitted to the comptroller by the tax assessor-collector will be refunded. A claim for the remaining 5.0% of the tax must be filed with the tax assessor-collector.

(b) [Refund of] Gross rental receipts tax paid in error.

(1) Tax paid to the comptroller. [Any person may request a refund of gross rental receipts tax which he has remitted to the comptroller in error.]

(A) Any person who has remitted gross rental receipts tax to the comptroller in error may claim credit for the amount of tax paid in error in a subsequent quarterly or monthly return.

(B) If the person is no longer required to file returns or if the amount of tax paid in error exceeds the amount of tax due in subsequent returns, the person may request a refund of the gross rental receipts tax which was remitted in error.

(i)(A) All requests for refunds must be made in writing, and must state the specific grounds upon which the claim is founded. The comptroller may require additional verification, including proof of tax paid, affidavits supporting the grounds for refund or other documentation necessary to validate the claim.

(ii)(B) A request for refund of motor vehicle gross rental receipts tax must be made within four [seven] years of the last day of the month following the close of the quarterly or monthly period for which the overpayment was made or within six months after any deficiency determination becomes final, whichever period expires later [or within six months from the date of any overpayment made to satisfy such deficiency determination].

(iii)(C) Failure to file a claim within the limitation prescribed by subparagraph (1)(B)(ii) [subsection (b)(1)(B)] of this subsection constitutes a waiver of any demand against the state on account of overpayment.

(2) Tax paid to a rental agency. Any person who remits gross rental receipts tax to a rental agency (or to any other person collecting the tax in the fashion of a rental agency) rather than directly to the comptroller, may not request from the comptroller a refund of any tax he has paid in error. The [Such] tax must be recovered from the rental agency.

(A) A written request for refund must be directed to the rental agency and must be accompanied

by verification that tax was paid in error. The request and verification must be retained by the rental agency to document the reason for the refund [he refunded the tax].

(B) After the rental agency has refunded or credited the tax to the account of the purchaser, the rental agency [he] may seek reimbursement from the state in accordance with the provisions of subsection (b)(1) of this subsection. [or may file an amended motor vehicle gross rental receipts tax return for the period in which the error was made. He may take credit on his next gross rental receipts tax return for the amount refunded or credited to the account of the purchaser.]

(c) Interest. Interest will be paid at the rate of 10% per annum on an amount found to have been erroneously paid to the comptroller's office for reporting periods after January 1, 1982. Refunds for reporting periods prior to January 1, 1982, will not accrue interest.

(1) Interest begins to accrue either 60 days after the date of payment or 60 days after the due date of the tax report, whichever is later.

(2) Interest stops on the date credit is allowed by the comptroller or 10 days prior to the date the refund warrant is issued.

(3) Credits taken by a taxpayer on the taxpayer's return do not accrue interest.

(4) No taxes, penalties, or interest will be refunded to a person who has collected the taxes from another person until they are first refunded to the party from whom they were collected.

(d)[(c)] Payments under protest.

(1) Payment made to a county tax assessor-collector [or rental agency]. [If, pursuant to the authority of either Texas Taxation-General, Article 1.05 or Texas Civil Statutes, Article 7057b, motor vehicle sales and use tax or motor vehicle gross rental receipts tax is paid under protest to a county tax assessor-collector or a rental agency, the comptroller will place the amount protested in a suspense account pending resolution of the matter in issue. A written letter of protest which sets out in detail each and every ground or reason why it is contended that the assessment is unlawful or unauthorized must be sent to the comptroller immediately upon payment of the tax to the tax assessor-collector or rental agency. The letter of protest must be accompanied by a copy of the tax receipt or rental receipt showing the tax was paid. If the letter of protest is not submitted immediately upon payment of the tax, the payment will not be placed in a suspense account and it will not be deemed to have been made under protest.]

(A) If, pursuant to the authority of either Texas Tax Code, §112.051, (formerly Texas Taxation-General, Article 1.05, or Texas Civil Statutes, Article 7057B), motor vehicle sales and use taxes are paid under protest to a county tax assessor-collector, the taxpayer must accompany the protest payment to the tax assessor-collector with a written letter of protest which sets out in detail each and every ground or reason why it is contended that the assessment is unlawful or unauthorized. Immediately upon receipt of the protest payment and written protest, a copy of the protest letter must be sent to the comptroller by the tax assessor-collector together with a copy of the tax receipt showing that tax was paid. If the taxpayer fails to submit to the county tax assessor-

collector the letter of protest at the time of payment, the tax should be remitted normally by the tax assessor-collector and not transferred to the state treasurer for placement in the suspense account.

(B) The payment of taxes under protest to a county tax assessor-collector is limited to those taxes which the tax assessor-collector is authorized to receive. If motor vehicle use taxes due under Texas Tax Code, §152.043, (formerly Texas Taxation-General, Article 6.04(2)) or motor vehicle gross rental receipts taxes are to be paid under protest, the taxpayer must comply with the provisions of subsection (d)(2) of this section.

(C) It is the duty of the county tax assessor-collector to transmit the full amount of all motor vehicle sales and use taxes paid under protest to the state treasurer to be placed in the suspense account pending resolution of the matter in issue. The tax assessor-collector shall transmit these protest payments to the state treasurer daily and the tax assessor-collector must inform the treasurer in writing that such taxes were paid under protest.

(D) The county tax assessor-collector is not entitled to retain 5.0% of any amounts of tax that have been paid under protest, but must transmit the entire amount of such payments to the state treasurer. If it is ultimately determined that the assessment was lawful and authorized, 5.0% of the protested amount will be returned to the county tax assessor-collector.

(2) Payment made to the comptroller. If motor vehicle sales and use tax or motor vehicle gross rental receipts tax is paid directly to the comptroller under protest pursuant to the authority of [either] Texas Tax Code, §112.051 (Formerly Texas Taxation-General, Article 1.05, or Texas Civil Statutes, Article 7057b), the protested amount will be transmitted to the state treasurer to be placed in a suspense account pending resolution of the matter in issue. A written letter of protest which sets out fully and in detail each and every ground or reason why it is contended that the assessment is unlawful or unauthorized must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will not be transferred to the state treasurer for placement in the suspense account [placed in a suspense account and the payment will not be deemed to have been made under protest].

(3) For the taxpayer's convenience, the comptroller will advise him of the amount received that is paid under protest and the date of the [such] payment. If suit is not filed in accordance with the statute, the protest payment will be cleared to the proper [general] fund after the expiration of 90 days from the date of the payment.

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 June 7, 1982.

TRD-824718

Bob Bullock
Comptroller of Public Accounts

Proposed date of adoption: July 16, 1982

For further information, please call (512) 475-1935.

**TITLE 37. PUBLIC SAFETY AND
CORRECTIONS**

**Part I. Texas Department of Public
Safety**

**Chapter 11. Commercial Vehicle
Registration**

Motor Carrier Enforcement Guidelines

37 TAC §§11.42-11.44

The Texas Department of Public Safety proposes amendments to §§11.42-11.44, concerning display of Railroad Commission of Texas cab card and external identifications. As the result of legislative action, the identification plate is no longer issued. Each time a replacement is used for a vehicle taken out of service, the carrier submits the cab card from the retired vehicle and a cashier's check or money order payable to the state treasurer for \$1.00. The \$1.00 fee was previously for issuance of a cab card required but not as part of this particular rule.

Melvin C. Peebles, chief accountant II, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Earl C. Haddock, inspector, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be that the certificated and permitted carriers will no longer be required to obtain and display a metal identification card issued by the Railroad Commission of Texas. There is no possible economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773, (512) 465-2000.

The amendments are proposed under Texas Civil Statutes, Article 911b, §18(a)(b), which provides Texas Department of Public Safety with the authority to enforce the requirement for display of a cab card and external identification markings on each motor vehicle operated under a certificate or permit issued by the Railroad Commission of Texas.

§11.42. Display and Use of Railroad Commission Identification Card [and Plate].

(a) When a vehicle is to be used as an increase in a carrier's fleet, a cab card [and identification plate] shall be secured before the vehicle is placed in service.

(b) When a vehicle is to be used to replace a vehicle which is part of the existing fleet of a carrier and the vehicle taken out of service is registered with the Texas Railroad Commission, the carrier may use the replacement vehicle when:

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

(3) he submits the cab card from the retired vehicle and a cashier's check or money order payable to the state treasurer for \$1.00 for each vehicle to the Railroad

Commission [the new vehicle has attached the identification plate originally issued to the vehicle removed from service].

(c) When a motor vehicle is temporarily out of service for repairs, any motor vehicle used as a replacement must have cab card and external identifications [identification plate].

(d) (No change.)

(e) When any motor company or sales agency of motor vehicles desires to offer for demonstration purposes a motor vehicle to a regulative carrier for use over his operation, such demonstrator motor vehicle must have a cab card and external identifications [identification plate] when the vehicle is used for hire. It shall be permissible for a carrier to use such vehicle or vehicles without regulation when the load thereon is owned by the carrier.

§11.43. Motor Carriers Operating under Temporary Authority.

(a) (No change.)

(b) The letter mentioned above is in lieu of a cab card. Cab card [or identification plate] is not issued for temporary authority.

§11.44. Drive-Away Operators.

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

(c) A Texas Railroad Commission cab card is [and plate are] required in [on] the power vehicle being used by drive-away operators to transport said vehicles for hire by the full mount method, the saddle mount method, the tow bar method, or any other combination. The cab card will not identify the vehicle by make, vehicle identification number, or motor number. The card will identify the carriers by name and certificate number and reflect the carriers' authority as to types of vehicles authorized to transport and territory or radial authority granted in the certificate.

[(d) If the carrier is from out of state and holds only interstate authority and is from a reciprocal state with regards to displaying of Texas Railroad Commission plates, no Texas Railroad Commission plates would be issued. If a plate is issued with a cab card, the plate number will appear in the designated space on the card.]

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 June 2, 1982.

TRD-824726

James B. Adams
Director
Texas Department of Public
Safety

Proposed date of adoption: July 16, 1982

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

**Chapter 15. Drivers License Rules
Reciprocity in Driver Licensing**

37 TAC §15.92

The Texas Department of Public Safety proposes an amendment to §15.92, concerning reciprocity in

driver licensing; specifically, interstate and armed forces reciprocity. The amendment deletes the canal zone from paragraph (1)(c) as a United States territory; therefore, canal zone residents will receive the same reciprocity as Texas residents receive in the canal zone.

Melvin C. Peeples, chief accountant II, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Joe E. Milner, chief of traffic law enforcement, has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be that, since the canal zone is no longer a territory of the United States, reciprocity to canal zone residents will be granted on the same conditions that a United States resident is granted reciprocity in the canal zone.

There is no economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6687b, §3, paragraphs (3), (4), (7), and (9), which provides the Texas Department of Public Safety with the authority to grant like reciprocity for driver licensing to residents of other states and nonresident recognition in Texas of licenses held by persons from territories of the United States, provinces of Canada, and the U.S. military service.

§15.92 Interstate and Armed Forces Reciprocity. The department grants like reciprocity for driver licensing to residents of other states.

(1) Nonresident recognition in Texas of licenses held by persons from other states, territories of the United States, provinces of Canada, and the United States military service is based upon Article 6687b, §3, paragraphs (3) and (4) and administrative policies. Thus:

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

(C) For the purposes of determining nonresident reciprocity, United States territories are identified as follows: American Samoa, Commonwealth of Puerto Rico, [Canal Zone,] Cook Islands, Guam, Midway Islands, Trust Territory of Pacific Islands, Virgin Islands, Canton, Baker, Carolina, Christmas, Danger, Enderbury, Flint, Funafuti, Howland, Jarvis, Johnston, Kingman, Navassa, Malden, Manahiki, Nukufetan, Nukulallal, Nurakita, Palmyra, Penrhyn, Rakahange, Reef, Sand, Starbuck, Swan, Vostok, Wake, and Phoenix Group. Reciprocity or nonreciprocity exists with these territories as indicated.

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

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

(2)-(5) (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 June 8, 1982.

TRD-824750

James B. Adams
Director
Texas Department of Public
Safety

Proposed date of adoption: July 16, 1982

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

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the Texas Register Division. The notice is generally effective immediately upon filing with the division.

If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the Texas Register Division. Notice of the withdrawal will appear in the next regularly scheduled issue of the *Register*. The effective date of the automatic withdrawal will appear immediately following the published notice.

No further action may be taken on a proposal which has been automatically withdrawn. However, this does not preclude a new proposal or an identical or similar rule following normal rulemaking procedures.

Withdrawn Rules

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

4 TAC §§35.1, 35.2, 35.4, 35.5

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed amendments to §§35.1, 35.2, 35.4, and 35.5, submitted by the Texas Animal Health Commission have been automatically withdrawn, effective June 7, 1982. The amendment as proposed appeared in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4417).

Issued in Austin, Texas, on June 7, 1982.

TRD-824742 John W. Holcombe, D.V.M.
Executive Director
Texas Animal Health Commission

Filed: June 7, 1982, 4:53 p.m.
For further information, please call (512) 475-4111.

TITLE 31. NATURAL RESOURCES AND CONSERVATION Part II. Parks and Wildlife Department Chapter 65. Wildlife Subchapter A. Statewide Hunting and Fishing

31 TAC §65.78

The Parks and Wildlife Department has withdrawn from consideration for permanent adoption proposed amendments to §65.78, concerning wildlife. The text

of the amended sections as proposed appeared in the March 12, 1982, issue of the *Texas Register* (7 TexReg 1029).

Issued in Austin, Texas, on June 4, 1982.

TRD-824728 Maurine Ray
Administrative Assistant
Parks and Wildlife Department

Filed: June 7, 1982, 1:58 p.m.
For further information, please call (512) 479-4806.

Part III. Texas Air Control Board Chapter 112. Sulfur Compounds Control of Sulfur Dioxide

31 TAC §§112.9, §112.10

The Texas Air Control Board has withdrawn from consideration for permanent adoption proposed repeal of §112.9 and §112.10, concerning sulfur compounds. The text of the repealed sections as proposed appeared in the December 25, 1981, issue of the *Texas Register* (6 TexReg 4805).

Issued in Austin, Texas, on June 9, 1982.

TRD-824776 Ramon Dasch
Director of Hearings
Texas Air Control Board

Filed: June 9, 1982, 9:33 a.m.
For further information, please call (512) 451-5711,
ext. 354.

31 TAC §§112.11-112.13, 112.17, 112.18,
112.20

The Texas Air Control Board has withdrawn from con-

sideration for permanent adoption proposed amendments to §§112.11, 112.13, 112.17, 112.18, and 112.20, concerning control of sulfur dioxide. The text of the amended sections as proposed appeared in the December 25, 1981, issue of the *Texas Register* (6 TexReg 4806):

Issued in Austin, Texas, on June 9, 1982.

TRD-824777 Ramon Dasch
 Director of Hearings
 Texas Air Control Board

Filed: June 9, 1982, 9:36 a.m.
For further information, please call (512) 451-5711,
ext. 354.

31 TAC §§112.9, 112.10, 112.21

The Texas Air Control Board has withdrawn from consideration for permanent adoption proposed new §§112.9, 112.10, and 112.21, concerning control of sulfur dioxide. The text of the new sections as proposed appeared in the December 25, 1981, issue of the *Texas Register* (6 TexReg 4805)

Issued in Austin, Texas, on June 9, 1982.

TRD-824775 Ramon Dasch
 Director of Hearings
 Texas Air Control Board

Filed: June 9, 1982, 9:32 a.m.
For further information, please call (512) 451-5711,
ext. 354.

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

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which: explain the legal justification for the rule; how the rule will function; contain comments received on the proposal; list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes; and contain the agency's interpretation of the statute under which the rule was adopted.

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. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

Adopted Rules

TITLE 25. HEALTH SERVICES Part VI. Statewide Health Coordinating Council Chapter 571. Health Planning and Resource Development State Health Plan

The Statewide Health Coordinating Council adopts amendments to §571.1, with changes to the proposed text published in the December 22, 1981, issue of the *Texas Register* (6 TexReg 4750). The council simultaneously adopts the repeal of §571.2, without changes to the proposed notice of repeal published in the December 25, 1981, issue of the *Register* (6 TexReg 4804).

The amendments and repeal revise the state health plan to increase awareness of the health problems in the state and knowledge about prevention activities. The public will also benefit from increased availability and accessibility of health promotion, prevention, and treatment activities.

The amendments will cover priority statewide health problems, develop goals and objectives aimed at alleviating the problems, and propose recommended actions and resource requirements that will be necessary to meet the goals. These amendments include the repeal of §571.2 on the Medical Facilities Planning Annex to the Texas State Health Plan. The information contained in the annex has been incorporated into the State Health Plan.

Several comments were received recommending minor changes in both plan content and composition for purposes of clarification. The Statewide Health Coordinating Council (SHCC) does not consider that

any of the recommendations proposed major or substantial changes. The SHCC accepted some of these recommendations and rejected others which they felt were unnecessary.

Groups or associations clearly for adoption of the amendments were: Governor's Office for Volunteer Services; Texas Education Agency; Texas Department of Human Resources; Texas Rehabilitation Commission; Governor's Commission on Physical Fitness; Texas Department of Water Resources; Texas Perinatal Association; Texas Medical Association; Texas Department on Aging; Texas Association for Retarded Citizens; Texas Air Control Board; Department of Obstetrics and Gynecology, University of Texas Health Science Center at Dallas; Texas Dietetic Association; Health Systems Agency 1; Department of Pediatrics, University of Texas Health Science Center at Houston; State Commission for the Blind; and University of Texas System Cancer Center, M.D. Anderson Hospital and Tumor Institute.

No groups or associations were against adoption of the amendments.

25 TAC §571.1

The amendments to §571.1 are adopted under the Health Planning and Resource Development Act of 1974, Public Law 93-641, §1524, which provides the Statewide Health Coordinating Council authority to adopt a state health plan.

§571.1. *State Health Plan for Texas.* The Statewide Health Coordinating Council adopts by reference the document entitled "The Texas State Health Plan, 1982-1986." This document has been published by the Statewide Health Coordinating Council and is available from the Bureau of State Health Planning and Resource

Development, Texas Department of Health, 1100 West 49th Street, Austin, Texas, effective July 30, 1982.

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 June 4, 1982.

TRD-824734 Louis E. Gibson, M.D., F.A.C.S.
Chairman
Statewide Health Coordinating
Council

Effective date: June 28, 1982
Proposal publication date: December 22, 1981
For further information, please call (512) 458-7261.

25 TAC §571.2

The repeal is adopted under the Health Planning and Resource Development Act of 1974, Public Law 93-641, §1524, which provides the Statewide Health Coordinating Council authority to adopt a state health plan.

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 June 4, 1982.

TRD-824735 Louis E. Gibson, M.D., F.A.C.S.
Chairman
Statewide Health Coordinating
Council

Effective date: June 28, 1982
Proposal publication date: December 25, 1981
For further information, please call (512) 458-7236.

TITLE 28. INSURANCE Part I. State Board of Insurance

(Editor's note: Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register Division numbers. However, the rules will be published under the agency's correct TAC title and part.)

Rating and Policy Forms Insuring of Automobiles and Standard Endorsements II

059.05.01.005

The State Board of Insurance adopts amendments to Rule 059.05.01.005 effective July 1, 1982, which adopts by reference the Rules Governing the Insuring of Automobiles and Standard Endorsements II (Texas Automobile Manual). Notice of the proposed amendments was published in the April 30, 1982, issue of the *Texas Register* (7 TexReg 1681). The amendments to the Texas Automobile Manual are adopted as proposed with no substantive changes.

The adopted amendments will enable companies and policyholders to select from a broader range of coverages, eliminate confusing and obsolete rules and

forms, and more accurately relate premiums and rates to actual and expected exposures.

All of the adopted rule amendments will appear in the Texas Automobile Manual for use by agents and insurance companies. From the Texas Automobile Manual rules and standard endorsements, companies, agents, and policyholders will be able to select the coverages, deductibles, and amounts of coverage desired.

No comments for or against the proposed rule amendments were received from any interested party or the public during the 30-day publication period. However, during the March 4, 1982, public hearing prior to publication of the proposed action in the *Texas Register*, certain persons or organizations offered comments on each item. A summary of the comments is as follows:

Proponents: By count, 19 rules and 12 endorsements are proposed for change. Only one of these proposals could clearly be said to involve rate making, and that is the change to Rule 89 of the Texas Automobile Manual dealing with drive-away collision coverage where the factory price—new brackets have been extended to recognize the continuing upward trend of unit prices and to delete the lowest bracket of zero to \$2,500 because it has become obsolete. These changes are leftover from the June 1, 1980, commercial class plan changes. All of the proposed changes are housekeeping amendments primarily editorial in nature.

Opponents: None.

Names of those making comments for the rule: David Irons, attorney, representing TAISO; Richard Geiger, attorney, representing TAISO; D. E. O'Brien, staff, State Board of Insurance; and Pat Whatley, actuary, Employers Casualty Company, representing TAISO. The board did not disagree with any of the comments.

The amendments are adopted under Texas Insurance Code, Articles 5.01, 5.06, and 5.10, which provides the State Board of Insurance with the authority to prescribe rates, premiums, rules, policy forms, and endorsements applicable to automobile insurance.

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 June 7, 1982.

TRD-824786 James W. Norman
Chief Clerk
State Board of Insurance

Effective date: July 1, 1982
Proposal publication date: April 30, 1982
For further information, please call (512) 475-2950.

059.05.01.005

The State Board of Insurance adopts amendments to Rule 059.05.01.005, effective July 1, 1982, which adopts by reference the Rules Governing the Insuring of Automobiles and Standard Endorsements II (Texas Automobile Manual). Notice of the proposed amend-

ments was published in the May 7, 1982, issue of the *Texas Register* (7 TexReg 1733).

The amendments to the Texas Automobile Manual were adopted as proposed with no substantive changes. The adopted amendment to Rule 21 of the Texas Automobile Manual will clarify that convictions for failure to maintain automobile liability insurance are not traffic violations for the purposes of Texas Automobile Insurance Plan premium surcharges. The adopted amendment to Rule 38 of the manual will enable those individuals successfully completing the 55 Alive/Mature Driving driver improvement course sponsored by the American Association of Retired Persons to receive a credit on certain of their automobile insurance premiums.

All of the adopted rule amendments will appear in the Texas Automobile Insurance Manual for use by agents and insurance companies. From the Texas Automobile Manual rules and standard endorsements, companies, agents, and policyholders will be able to select the coverages, deductibles, and amounts of coverage desired.

No comments for or against the amendments were received from any interested party or the public during the 30-day publication period.

The amendments are adopted under Texas Insurance Code, Articles 5.01 and 5.10, which provides the State Board of Insurance with the authority to prescribe rates, premiums, and rules applicable to automobile insurance.

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 June 7, 1982.

TRD-824785 James W. Norman
 Chief Clerk
 State Board of Insurance

Effective date: July 1, 1982
Proposal publication date: May 7, 1982
For further information, please call (512) 475-2950.

**TITLE 31. NATURAL RESOURCES
AND CONSERVATION
Part II. Parks and Wildlife
Department
Chapter 65. Wildlife
Subchapter A. Statewide Hunting and
Fishing**

31 TAC §§65.6, 65.23, 65.26, 65.27, 65.33-65.35, 65.42, 65.44, 65.46, 65.61-65.63, 65.72, 65.73, 65.81, 65.91

The Parks and Wildlife Commission in a regularly scheduled public hearing held May 13, 1982, adopted new §65.27 and amendments to §§65.6, 65.23,

65.26, 65.33-65.35, 65.42, 65.44, 65.46, 65.61-65.63, 65.72, 65.73, 65.81, and 65.91, with changes to the proposed text published in the March 12, 1982, issue of the *Texas Register* (7 TexReg 1029), to be effective June 28, 1982. Sections 65.1-65.91 constitute the Statewide Hunting and Fishing Proclamation.

As a result of a petition, the commission amended §65.33 to provide Smith County with a regular length deer season of 51 days. As a result of two commissioner's court resolutions, the commission amended §65.63 to provide a special regulation for Lake Buchanan where there is no limit to the number of trotlines or hooks.

The Parks and Wildlife Commission is responsible for regulating by proclamation the periods of time, means, methods, manners, and places for taking wildlife resources in counties where the Uniform Wildlife Regulatory Act applies. The Uniform Wildlife Regulatory Act enables the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

In certain counties the Statewide Hunting and Fishing Proclamation is not effective unless it has been approved by the commissioner's court of a county listed in Texas Parks and Wildlife Code, §61.202 or §230.051. The sections below do not incorporate such action. Changes made by a commissioner's court of a county listed in Texas Parks and Wildlife Code, §61.202 or §230.051, will be published in the Adopted Rules section of the *Texas Register*.

Fluctuations in wildlife resource populations required the Parks and Wildlife Commission to adopt regulation changes for the 1982-1983 hunting and fishing seasons. Other changes are adopted to clarify the text. The changes provide harvest of wildlife resource populations consistent with recognized wildlife management principles.

Comments by the public concerning the adopted regulation changes were presented to the Parks and Wildlife Commission in the form of county public hearing summaries, petitions, commissioner's court resolutions, letters, and summaries of telephone calls. No comments were received via the *Texas Register*. The public commented on proposed and existing rules which are briefly summarized below.

The proposed changes were discussed at 127 of the 241 county public hearings where there was attendance during the week of March 15-19, 1982; 1,194 persons attended the meetings. Testimony obtained from the hearings is briefly summarized below.

Most comments were unfavorable and concerned: the department's implementation of either sex deer bag limits where no antlerless deer permit is required; prohibiting the use of nets to take redfish and trout, and banning of nets by persons who do not hold a commercial finfish fisherman's license; prohibiting sports netting in saltwaters; prohibiting the retention of redfish and trout taken by trotline; the redefinition of a buck deer in Comal, Kendall, and Kerr Counties; com-

binning 81 counties into one subparagraph which allows enforcement of the one buck bag limit per person per season in these counties; providing an archery only season in certain counties; providing a spring gobbler season in certain counties; changing javelina seasons and bag limits; and providing for retention of undersized soft shelled crabs in order to establish a soft shell crab industry.

Petitions requested: an extended Smith County deer season, 1,194 signatures; an extended Harrison County deer season, 390 signatures; a Childress County quail season beginning December 1, through February 15 with a bag limit of 12 per day, 223 signatures; that the commission not prohibit the retention of redfish and trout taken by trotline in Calhoun County, 122 signatures, the Gray County pheasant season be closed for five years, 111 signatures; sport seining be allowed in Jefferson County saltwaters on weekends, 111 signatures; saltwater sport seining be allowed in Jefferson County, 1,854 signatures; spike bucks and antlerless deer without an antlerless deer permit be legal game, 82 signatures on three petitions; the Donley County quail season begin December 1 and run through February 15 with a bag limit of 12 per day, 222 signatures; a Hall County quail season beginning the first Saturday after Thanksgiving, 163 signatures; and that all of the department's proposed changes be supported in Kerr County, 424 signatures.

Commissioner's court resolutions requested that in Atascosa County to take antlerless deer an antlerless deer permit is required; that in Childress and Donley Counties the quail season begin December 1, and run through February 15 with a bag limit of 12 per day; that Morris County be allowed to return to its split deer season; and that Llano and Burnet Counties be allowed a special Lake Buchanan trotline regulation of no limit to the number of trotlines or hooks possessed but no more than 30 hooks per trotline.

Letters requested an increase or decrease in seasons and bag limits for deer; either sex deer hunting be prohibited; spike bucks be taken as legal game; sports netting in saltwater be prohibited; since there is already a bag limit on redfish and trout, there is no need to prohibit retention of these species taken by trotline; and squirrel season not be opened the same time as deer archery season.

Telephone calls requested either sex deer hunting be allowed or prohibited; prohibiting the retention of trout and redfish taken by trotline; a spring turkey season; continuance of allowing hunters to run deer with dogs; that sports netting be prohibited; that quail season should begin later, and that buck deer be taken by permit only.

In the public hearing there were no persons speaking for the proposed rules. Persons making comments against the rules were Kerr County Judge Julius R. Nuenhoffer, who spoke against removal of protection for spike bucks, taking antlerless deer without antlerless deer permits, placing a bag limit on javelina and a spring gobbler season; Will J. Ney, Jr., who spoke against allowing two buck deer to be taken from

Medina County; Harold Beeson, who spoke against prohibiting beach seining; John Null, Jr., of P I S.C.E S., who spoke against prohibiting beach seining, and prohibiting the retention of spotted seatrout and red drum taken by net or trotline; Dan Heinen, Jr., who spoke against allowing antlerless deer to be taken in Atascosa County without an antlerless deer permit. Six other persons spoke against existing rules.

The department is required by Texas Parks and Wildlife Code, §61.051 and §61.053, to provide wildlife resource regulations conditioned upon scientific investigations. The department's investigations counter the above comments and are stated as follows.

Seven years of research performed on the Kerr Wildlife Management Area indicates that spike antlered yearlings are inferior and will never catch up to fork antlered yearlings in body weight and antler development. In areas of overpopulation, antlerless deer should be taken in greater numbers, and the most feasible way to accomplish this is removal of restrictive permits which will allow landowners to regulate the harvest of antlerless deer from their property. Javelina herds in the Edwards Plateau are small and widely scattered and as such protection is necessary to prevent decimation. Turkey gobblers, after breeding, are considered surplus and may be taken without adversely impacting the population. Medina County has a sufficient buck deer population to allow the taking to two buck deer. Prohibiting of beach seining will, additionally, decrease the harvest of red drum and spotted seatrout. Prohibiting retention of red drum and spotted seatrout taken by net or trotline will reduce fishing pressure, by reducing gear types, upon these two overfished species. Taking of antlerless deer in Atascosa County with an antlerless deer tag, but without antlerless deer permits will allow landowners to regulate the harvest of antlerless deer without restrictions as to the amount of acreage owned.

The new rule and amendments are adopted under Texas Parks and Wildlife Code, Chapter 61, which provides the Parks and Wildlife Commission with the authority to provide wildlife resource regulations in counties to which the Uniform Wildlife Regulatory Act applies.

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

Antlerless deer—A deer having no hardened antler protruding through the skin.

Bearded hen—A female turkey possessing a clearly visible beard protruding through the feathers of the breast.

Buck deer—A deer having a hardened antler protruding through the skin.

Daily bag limit—The quantity of a species of game that may be taken in one day (Texas Parks and Wildlife Code, §61.005(5)).

Game animals—Include the following:

(A) Wild deer, wild antelope, wild desert bighorn sheep, wild black bear, wild gray or cat squirrel.

rels, wild fox squirrels or red squirrels, and collared peccary or javelina (Texas Parks and Wildlife Code, §63.001).

(B) In Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher Counties only, aoudad sheep are game animals (Texas Parks and Wildlife Code, §63.001).

(C) In Bexar County, nonindividually owned axis deer are wildlife resources as follows (Texas Parks and Wildlife Code, §115.001):

(i) A nonindividually owned axis deer in Bexar County is defined as an animal that has not been released for stocking purposes on property that is enclosed by a deer-proof fence.

(ii) An animal that has not been stocked on property where the landowner has a bill of sale or other legal document verifying a transaction has transpired whereby ownership of individually owned axis deer has been consummated.

(D) In Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, Pecos, Presidio, Reeves, and Terrell Counties, wild elk are game animals (Texas Parks and Wildlife Code, §63.001).

Game birds—Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens, wild pheasants of all varieties, wild partridge, wild bobwhite quail, wild scaled quail, wild Mearns's quail, wild Gambel's quail, wild red-billed pigeons, wild band-tailed pigeons, wild mourning doves, wild white-winged doves, wild white-fronted doves, wild snipe of all varieties, wild shore birds of all varieties, chachalacas, wild plover of all varieties, and wild sandhill cranes (Texas Parks and Wildlife Code, §64.001).

Hunt—Includes take, kill, pursue, trap, and the attempt to take, kill, or trap (Texas Parks and Wildlife Code, §61.005(1)).

Jug line—A free-floating main fishing line with five or less hooks attached, the minimum hook interval is three horizontal feet and the main line is tied to a free-floating device.

Monofilament—A single synthetic filament.

Per season—The period of time for which a hunting license is valid whether or not the taking of wildlife is permitted in one or more periods during this time.

Possession limit—The maximum number of a species of game that may be possessed at one time (Texas Parks and Wildlife Code, §61.005(6)).

Rough fish—Carp, suckers, buffalo, gar, shad, Rio Grande perch, drum or gaspergou, bowfin or grindle, pickerel, mullet, and goldfish.

Snail line—A type of trotline permitted only in saltwater with one end of the line fixed on the shore, pier, or jetty, the other end of the line attached to a wind-powered device or sail with no more than 30 hooks, with no hook placed more than 200 feet from the sail, no more than one sail line per fisherman, who must attend the line at all times the line is fishing.

Shad trawl—A trawl having a mouth no larger than 36 inches in diameter and being no longer than six feet which may be equipped with a funnel or throat and which must be towed by boat or by hand.

Snagline—A type of trotline with unbaited hooks spaced not less than six inches apart set only in saltwaters

not more than two feet in depth at mean low tide.

Texas Parks and Wildlife Department or department—As the context requires, the Parks and Wildlife Department, or a specifically authorized employee of the department.

Throwline—A main fishing line with five or less hooks attached, the minimum hook interval is three horizontal feet, and with one end permanently attached to a permanent fixture.

Trammel net—A net consisting of three walls of webbing with a maximum mesh size of eight inch square mesh for the two outer walls, and a minimum mesh size of 1-½ inch square mesh for the center wall.

Trotline—Includes a sail line and/or rubber band line and shall be constructed of nonmetallic materials, and is a main fishing line with more than five hooks attached and the minimum hook interval is three horizontal feet.

Upstream boundary of Sam Rayburn Reservoir on the Angelina River—The Texas Eastern Transmission Company pipeline.

Wildlife resources—All game animals, game birds, marine animals, fish, and other aquatic life (Texas Parks and Wildlife Code, §61.005(2)).

§65.23. *Antlerless Deer Permits.*

(a)-(f) (No change.)

(g) The permit shall be attached to each antlerless deer taken, and shall remain attached until the deer has been fully processed.

(h)-(i) (No change.)

§65.26. *Buck Deer Permits for Duval, Maverick, Webb, and Zapata Counties.*

(a) In Duval, Maverick, Webb, and Zapata Counties, the department shall issue buck deer permits for designated tracts only to landowners or their agents only after the owners or agents have applied in writing for the number of permits to be used on the designated tracts.

(b)-(j) (No change.)

§65.27. *Antlerless Deer Tags.*

(a) It shall be unlawful to possess any antlerless deer taken in counties listed in §65.33(1)(B) and (E) of this title (relating to Deer) unless tagged with an antlerless deer tag issued by the department to the landowner or his authorized agent only after said landowner or agent has applied in writing for the exact number of tags to be used on the designated tracts. Such tag shall be properly filled out and attached to each antlerless deer taken and shall remain attached until the deer has been fully processed.

(b) It shall be unlawful for a landowner or agent to issue an antlerless deer tag to a hunter to hunt on any tract other than the designated tract for which the tag was issued.

(c) It shall be unlawful for a hunter to use an antlerless deer tag on a tract other than the designated tract for which the tag was issued.

§65.33. *Deer.* The general statewide bag and possession limit is no more than four deer, no more than two mule deer, only one of which may be a buck mule deer, no more than two white-tailed bucks, and no more than three antlerless deer of all species combined (see §65.6

of this title (relating to Definitions)) and §65.26(d) and (e) of this title (relating to Buck Deer Permits for Duval, Maverick, Webb, and Zapata Counties), for definition of buck deer).

(I) White-tailed deer, regular open seasons, bag, and possession limits shall be as follows:

(A) In Anderson, Aransas, Bee, Bosque, Brazoria, Brooks, Brown, Calhoun, Callahan, Cameron, Coleman, Comanche, Concho, Coryell, DeWitt, Dimmit, Duval, Eastland, Ector, Erath, Fort Bend, Freestone, Frio, Glasscock, Goliad, Gonzales, Guadalupe, Hamilton, Hardin, Harris, Harrison, Hidalgo, Jackson, Jasper, Jefferson, Jim Wells, Karnes, Kendall, Kinney, Kleberg, LaSalle, Liberty, Limestone, Live Oak, Llano, Matagorda, Maverick, Medina, Midland, Montgomery, Nacogdoches, Newton, Nueces, Orange, Panola, Polk, Reagan, Refugio, Robertson, Runnels, Rusk, San Augustine, San Patricio, Shelby, Somervell, Starr, Taylor, Travis, Tyler, Upton, Uvalde, Victoria, Walker, Ward, Webb, Wharton, Willacy, Wilson, Zapata, and Zavala Counties, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through the first Sunday in January. The bag limit is three white-tailed deer, no more than two bucks, antlerless by permit only.

(B) In Atascosa, Bandera, Bell, Bexar, Blanco, Burnet, Coke, Comal, Crockett, Edwards, Gillespie, Hays, Irion, Kerr, Kimble, Lampasas, Mason, McCulloch, Menard, Mills, Mitchell, Nolan, Real, San Saba, Schleicher, Sterling, Sutton, Tom Green, Val Verde (east of the Pecos River) and Williamson Counties, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through the first Sunday in January.

(i)-(ii) (No change.)

(iii) An antlerless deer tag is required by §65.27 of this title (relating to Antlerless Deer Tags) to take antlerless deer in counties listed within this subparagraph.

(C) No person may take or possess more than one white-tailed buck deer per season from counties, in the aggregate, listed within this subparagraph.

(i) In Armstrong, Briscoe, Carson, Childress, Collingsworth, Cottle, Donley, Floyd, Gray, Hall, Hansford, Hardeman, Hemphill, Hutchinson, Lipscomb, Moore, Motley, Ochiltree, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler Counties, there is an open season for white-tailed deer beginning the Saturday before Thanksgiving for 16 consecutive days, and the bag limit is one white-tailed deer, buck or antlerless, antlerless by permit only.

(ii) In Borden, Crosby, Fisher, Garza, Haskell, Howard, Jones, Kent, Knox, Scurry, and Stonewall Counties, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through the first Sunday in January, and the bag limit is two white-tailed deer, no more than one buck, antlerless by permit only.

(iii) In Camp, Franklin, Lamar, Morris, and Titus Counties, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through November 30, and the bag limit is three white-tailed deer, no more than one buck, antlerless by permit only.

(iv) In Wood County, there is an open season for white-tailed deer beginning the Saturday nearest November 15 for 30 consecutive days, and the bag limit is three white-tailed deer, no more than one buck, antlerless by permit only.

(v) In Fannin County, there is an open season for white-tailed deer beginning the Saturday nearest November 15 for five consecutive days, and the bag limit is three white-tailed deer, no more than one buck, antlerless by permit only.

(vi) In Archer, Austin, Bastrop, Baylor, Brazos, Burleson, Caldwell, Clay, Colorado, Cooke, Denton, Ellis, Falls, Fayette, Hill, Hood, Jack, Johnson, Lavaca, Lee, Madison, McLennan, Milam, Montague, Navarro, Palo Pinto, Parker, Shackelford, Smith, Stephens, Tarrant, Throckmorton, Waller, Washington, Wichita, Wilbarger, Wise, and Young Counties, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through the first Sunday in January, and the bag limit is three white-tailed deer, no more than one buck, antlerless by permit only.

(vii) In Red River County, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through November 30, and December 26 through December 31, and the bag limit is three white-tailed deer, no more than one buck, antlerless by permit only.

(D) (No change.)

(E) In Jeff Davis, Pecos, Terrell, and Val Verde (west of the Pecos River) Counties, there is an open season for white-tailed deer beginning the last Saturday in November through the first Sunday in January. The bag limit is three white-tailed deer, no more than two bucks. Antlerless deer may be taken without an antlerless deer permit required by §65.21 of this title (relating to Permits) and §65.23 of this title (relating to Antlerless Deer Permits). An antlerless deer tag is required by §65.27 of this title (relating to Antlerless Deer Tags) to take antlerless deer in counties listed within this subparagraph.

(F) In Chambers (west of the Trinity River) County, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through the first Sunday in January.

(G) In Bowie County, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through November 30, and December 26 through December 31, and the bag limit is three white-tailed deer, no more than two bucks, antlerless by permit only.

(H) In Henderson County, there is an open season for white-tailed deer beginning the Saturday nearest November 15 through the first Sunday in January and the bag limit is three white-tailed deer, no more than two bucks, antlerless by permit only. In that portion of Henderson County bounded on the north by the county line, on the east by U.S. Highway 175 and Tin Can Alley Road, on the south by State Highway 71, and on the west by State Highway 274, hunting, shooting, or taking of deer is restricted to shotguns with buckshot or longbows and arrows, and other game birds or game animals may be taken only with shotgun or longbow and arrows.

(I) In Houston and Trinity Counties, there is an open season for white-tailed deer as provided by Parks

and Wildlife Code, Title 7, and the bag limit is three white-tailed deer, no more than two bucks, antlerless by permit only.

(J) In Dimmit, Duval, Maverick, Webb, Zapata, and Zavala Counties, there is an additional open season for white-tailed antlerless deer beginning the fourth Saturday in October for 16 consecutive days, during which only antlerless white-tailed deer may be taken, by permit only.

(K) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Grayson, Hale, Hartley, Hockley, Hudspeth, Hunt, Kaufman, Lamb, Lubbock, Lynn, Martin, Oldham, Parmer, Rockwall, Terry, Winkler, and Yoakum Counties, there is no regular open season for white-tailed deer.

(2) White-tailed deer: archery only open seasons, bag, and possession limits shall be as follows:

(A) In Anderson, Aransas, Atascosa, Bandera, Bee, Bell, Bexar, Bosque, Brazoria, Brewster, Brooks, Brown, Calhoun, Callahan, Coke, Coleman, Comal, Comanche, Concho, Coryell, Crockett, Culberson, DeWitt, Dimmit, Duval, Eastland, Edwards, Erath, Fort Bend, Freestone, Frio, Goliad, Gonzales, Guadalupe, Hamilton, Hardin, Harrison, Hays, Henderson, Hidalgo, Irion, Jackson, Jasper, Jeff Davis, Jim Wells, Kendall, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Liberty, Live Oak, Matagorda, Maverick, Medina, Menard, Mills, Mitchell, Nolan, Pecos, Polk, Presidio, Real, Reeves, Refugio, Runnels, San Patricio, Schleicher, Somervell, Starr, Sterling, Sutton, Taylor, Terrell, Tom Green, Tyler, Uvalde, Val Verde, Victoria, Walker, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala Counties, there is an open season during which white-tailed deer of either sex may be taken with longbow and arrows beginning the first Saturday in October for 30 consecutive days. The bag limit is three white-tailed deer, either sex, no more than two bucks.

(B) In Bowie, Cameron, Ector, Glasscock, Harris, Jefferson, Karnes, Limestone, Midland, Montgomery, Nacogdoches, Newton, Nueces, Orange, Panola, Reagan, Robertson, Rusk, San Augustine, Shelby, Upton, and Ward Counties, there is an open season during which white-tailed buck deer may be taken with longbow and arrows beginning the first Saturday in October for 30 consecutive days. The bag limit is two white-tailed buck deer.

(C) No person may take or possess more than one white-tailed buck deer per season from counties, in the aggregate, listed within this subparagraph.

(i) In Brazos, Burleson, Colorado, Hood, Lavaca, McLennan, Shackelford, and Throckmorton Counties, there is an open season during which white-tailed deer of either sex may be taken with longbow and arrows beginning the first Saturday in October for 30 consecutive days, and the bag limit is three white-tailed deer, either sex, no more than one buck.

(ii) In Archer, Armstrong, Austin, Bastrop, Baylor, Borden, Briscoe, Caldwell, Camp, Carson, Childress, Clay, Collingsworth, Cooke, Cottle, Crosby, Denton, Donley, Ellis, Falls, Fannin, Fayette, Fisher, Floyd, Franklin, Garza, Gray, Grayson (only on the Hagerman National Wildlife Refuge), Hall, Hansford,

Hardeman, Haskell, Hemphill, Hill, Howard, Hutchinson, Jack, Johnson, Jones, Kent, Knox, Lamar, Lee, Lipscomb, Madison, Milam, Montague, Moore, Morris, Motley, Navarro, Ochiltree, Palo Pinto, Parker, Potter, Randall, Red River, Roberts, Scurry, Sherman, Smith, Stephens, Stonewall, Swisher, Tarrant, Titus, Waller, Washington, Wheeler, Wichita, Wilbarger, Wise, Wood, and Young counties, there is an open season during which white-tailed buck deer may be taken with longbow and arrows beginning the first Saturday in October for 30 consecutive days. The bag limit is one white-tailed buck deer.

(D) In Houston and Trinity Counties, there is an open season during which white-tailed deer of either sex may be taken with longbow and arrows beginning October 1 and ending October 31. The bag limit is three white-tailed deer, either sex, no more than two bucks.

(E) In Chambers (west of the Trinity River) County, there is an open season during which white-tailed deer may be taken with longbow and arrows beginning the first Saturday in October for 30 consecutive days.

(F) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Grayson (except on Hagerman National Wildlife Refuge), Hale, Hartley, Hockley, Hudspeth, Hunt, Kaufman, Lamb, Lubbock, Lynn, Martin, Oldham, Parmer, Rockwall, Terry, Winkler, and Yoakum Counties, there is no archery only open season for white-tailed deer.

(G) The archery bag limit is not in addition to the regular open season bag limits for white-tailed deer.

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

(5) Deer: national wildlife refuges. Hunting season dates may further be restricted in compliance with regulations promulgated by the U.S. Fish and Wildlife Service and published in the *Federal Register*.

(A) (No change.)

(B) On the Laguna Atascosa National Wildlife Refuge in Cameron County, the white-tailed deer bag limit is either sex during the archery only season. During both the regular open and archery only seasons a metal box-car type seal issued by the Parks and Wildlife Department must be attached to the deer carcass at the Laguna Atascosa National Wildlife Refuge's deer checking station.

(C) On the Hagerman National Wildlife Refuge in Grayson County, a metal box-car type seal issued by the Parks and Wildlife Department must be attached to the deer carcass at the Hagerman National Wildlife refuge's deer checking station.

§65.34. Javelina: Open Seasons and Bag Limits.

(a) (No change.)

(b) In Aransas, Atascosa, Bandera, Bee, Bexar, Brewster, Brooks, Cameron, Crockett, Culberson, Dimmit, Duval, Edwards, El Paso, Frio, Hidalgo, Hudspeth, Jeff Davis, Jim Wells, Karnes, Kerr, Kimble, Kinney, Kleberg, LaSalle, Live Oak, Maverick, Medina, Menard, Nueces, Pecos, Presidio, Real, Reeves, San Patricio, Schleicher, Starr, Sutton, Terrell, Uvalde, Val Verde, Webb, Willacy, Wilson, Zapata, and Zavala Counties, there is no closed season and a bag limit of two javelina per season. The possession limit is two javelina.

(c) In all other regulatory counties, there is no open season for javelina.

§65.35. Squirrel: Open Seasons, Bag, and Possession Limits.

(a) In Brazos, Burleson, Collin, Colorado, Dallas, Ellis, Falls, Fayette, Grayson, Grimes, Jackson, Kaufman, Lavaca, Lee, Madison, Matagorda, Milam, Pecos, Rockwall, Terrell, Washington, and Wharton Counties, there is no closed season for squirrel. The bag and possession limits are 10 squirrels per day and 20 in possession.

(b)-(f) (No change.)

§65.42. Prairie Chicken: Open Seasons and Bag Limits.

(a) In Cochran, Collingsworth, Donley, Gray, Hemphill, Hockley, Lipscomb, Ochiltree, Roberts, Terry, Wheeler, and Yoakum Counties, there is an open season on prairie chicken beginning the third Saturday of October for two consecutive days. Only shotguns, falconry, and longbow and arrows may be used. Bag and possession limits are two prairie chickens per day and four in possession after the first day. Each prairie chicken taken during the open season must be presented at a department checking station for tagging prior to 10 p.m. on the date taken.

(b) (No change.)

§65.44. Pheasant: Open Seasons, Bag, and Possession Limits.

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

(c) In Matagorda County, there is an open season for pheasants beginning the Saturday nearest November 15 for 30 consecutive days, only in that portion of Matagorda County within boundaries beginning at junctions of Jackson-Matagorda County line and Highway 35, east and north along Highway 35 to its junction with FM Road 2853; thence along FM 2853 to Blessing, continuing west from Blessing along FM 616 to its junction with FM Road 1862, then southwest along FM 1862 to the Jackson-Matagorda County line, with the county line being the westernmost boundary which continues south to the intersection with State Highway 35. Bag and possession limits are two cock pheasants per day and four in possession after the first day. Head and feet must remain attached to the pheasant carcass until it reaches its final destination.

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

§65.46. Turkey.

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

(d) Exceptions to general open season, archery only season, or bag limits.

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

(e) Spring turkey gobbler season.

(1) In Archer, Armstrong, Atascosa, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Briscoe, Brooks, Brown, Burnet, Caldwell, Callahan, Carson, Childress, Clay, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Coryell, Cottle, Crockett, Crosby, Dallam, Dawson, Donley, Eastland, Ector, Edwards, Erath, Fisher, Floyd, Frio, Garza, Glasscock, Gillespie, Goliad, Gonzales, Gray, Hamilton, Hall, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hidalgo, Hood, Howard, Hutchinson, Irion, Jack, Jim Wells, Jones, Karnes, Kendall, Kent, Kerr, Kimble, Kinney, Kleberg, Knox, Lampasas, LaSalle, Lipscomb, Live Oak, Llano, Lynn, Martin,

Mason, McCulloch, Medina, Menard, Midland, Mills, Mitchell, Montague, Moore, Motley, Nolan, Ochiltree, Oldham, Palo Pinto, Parker, Pecos, Potter, Randall, Reagan, Real, Roberts, Runnels, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Swisher, Sutton, Taylor, Terrell, Throckmorton, Tom Green, Travis, Upton, Uvalde, Val Verde, Victoria, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Young, and Zavala Counties, there is a spring season on turkey gobblers beginning the Saturday nearest April 15 for 16 consecutive days during which one gobbler may be taken.

(2) (No change.)

(3) In Newton County, there is an additional area where one turkey gobbler may be taken during the open season beginning the Saturday nearest April 1 for 16 consecutive days, that area lying within boundaries beginning at the junction of Big Cow Creek and the Sabine River, thence southerly along the Sabine River to the junction of Big Cypress Creek, thence westerly along Big Cypress Creek to the junction of State Highway 87, thence northerly along State Highway 87 to the junction of FM Road 1416, thence easterly along FM Road 1416 to the junction with Big Cow Creek, thence southeasterly along Big Cow Creek to the junction of the Sabine River.

(4) In Anderson and Henderson Counties, there is a spring season on turkey gobblers beginning the Saturday nearest April 15 for 16 consecutive days during which one gobbler may be taken only within the area beginning at the Trinity River bridge on State Highway 31 and extending eastward along State Highway 31 to the junction with State Highway 19 in Athens, thence southward along State Highway 19 to the junction with U.S. Highway 79 in Palestine, thence westward along U.S. Highway 79 to the Trinity River bridge, thence northward along the Trinity River to the bridge on State Highway 31.

§65.61. Freshwater Fish: General.

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

(c) There is no closed season on fishing except that there may be a closed season on state or federal wildlife sanctuaries.

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

(5) In the Upper Waterworks Lake in Anderson County, fishing is prohibited beginning September 1, 1982, through August 31, 1984.

§65.62. Freshwater Fish: Bag, Possession, and Size Limits.

(a) (No change.)

(b) Provisions relating to catfish shall be as follows:

(1) In all regulatory counties except as noted, it is unlawful to possess channel, blue, or flathead catfish less than nine inches in length taken from public waters. The daily bag limit on channel and blue catfish is 25 in the aggregate, and the possession limit is 50 in the aggregate. The daily bag limit on flathead catfish is five, and the possession limit is 10, except:

(2) (No change.)

(3) In Lake Livingston, the daily bag limit on channel and blue catfish is 50 in the aggregate and the holder of a commercial fishing license may not retain any channel or blue catfish less than 14 inches in length;

(4) In Llano, Mason, and San Saba Counties,

there are no size limits on blue, channel, or flathead catfish; and

(5) In the Anderson County lakes of Wolf Creek, Upper Waterworks, Lower Waterworks, and Blue, the daily bag limit on channel catfish is five.

(c)-(m) (No change.)

(n) In freshwater impoundments, the daily bag limit on red drum is 10, and the possession limit is 20. No person may retain or possess red drum less than 16 or more than 35 inches in length.

(o) There are no bag or possession limits on other species of fish.

(p) It is unlawful to remove game fish eggs from the public waters of this state.

(q) It is unlawful for any person while actually fishing on the public waters of this state to have in his immediate possession fish in excess of the daily bag limit as established by these sections.

§65.63. Freshwater Fish: Means and Methods.

(a) In regulatory counties, only the following means and methods may be used to take fish. It is unlawful to take or attempt to take fish by any means and methods, except as specifically allowed in this section.

(1) Pole and line, rod and reel, artificial and natural baits, hand line, jug line, or throwline and trotline; hooks on throwlines and trotlines must be spaced not less than three horizontal feet apart.

(A)-(G) (No change.)

(H) In the waters of the Fayette County power cooling pond in Fayette County and in the Anderson County lakes of Wolf Creek, Upper Waterworks, Lower Waterworks, and Blue, the use of trotlines is prohibited.

(I)-(J) (No change.)

(K) In Lake Buchanan in Burnet, Lampasas, Llano, and San Saba Counties, there is no limit on the number of trotlines or throwlines a person may possess, each trotline may not have more than 30 hooks, and 50 foot minnow seines are permitted.

(2)-(5) (No change.)

(6) Any net set in public waters of this state in violation of the provisions of this subchapter shall be removed from the waters thereof. Any net used in public waters by sports fishermen shall be identified by a legible tag constructed of a material as durable as the net, bearing the name and address of the fisherman and the date it was set out. Trammel nets, gill nets, and drag seines may not be used, except as provided as follows:

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

(C) In Henderson County, a three-inch square mesh net is permitted to take rough fish only, except that in the waters of Cedar Creek Reservoir, Flat Creek, Trinidad City Lake, and in Lake Palestine in Henderson County, such nets may not be used.

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

(F) In Houston (except in Houston County Lake and in the Trinity River where it forms the boundary with Madison County), Jefferson, Liberty, Nacogdoches, (except Nacogdoches City Lake), Newton, Orange, Polk (except in the Trinity River), San Augustine, Trinity, and Tyler Counties and in the Sabine River in Orange County, hoop nets, trammel nets, and gill nets of nonmetallic construction having a mesh size not less than

three inches square may be used for taking only rough fish, as defined, except that it is unlawful to use nets for taking fish from the Neches River from the Jasper-Angelina County line to the bridge over the Neches River between Bridge City and Groves on State Highway 87, and from the waters of Jefferson and Orange Counties eastward of State Highway 347 and southward of IH 10, excluding the Sabine River, and from the waters of the Angelina River in Jasper County below the Sam Rayburn Dam, and in Sam Rayburn Reservoir, and in Sam Rayburn Reservoir below the Texas Eastern Transmission Company pipeline, and in Lake Livingston and in Toledo Bend Reservoir. It shall be unlawful to have in possession or aboard a boat or in a vehicle, fish other than rough fish, as defined, while fishing with or possessing a hoop net, trammel net, or gill net.

(G)-(L) (No change.)

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

§65.72. Saltwater Fish: Open Seasons, Bag, Possession, and Size Limits. There is no closed season, bag, possession, or size limit on saltwater fish, except as provided in the Texas Parks and Wildlife Code, Chapter 66, Subchapter C, and Title 7, and as excepted in the following:

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

(4) it is unlawful for the holder of a commercial finfish fisherman's license to use a spear gun and spear, bow and arrow, or gig to take red drum;

(5) it is unlawful for the captain and/or crew of a commercial fishing vessel to possess or land billfish, except swordfish; and

(6) (No change.)

§65.73. Saltwater Fish: Means and Methods.

(a) (No change.)

(b) In regulatory counties, only the following means and methods may be used for taking fish:

(1) (No change.)

(2) Nets and seines.

(A) No person other than the holder of a commercial finfish fisherman's license may use any net or seine except cast nets, dip nets, or 20-foot minnow seine for taking fish.

(B) No person may retain or possess red drum or spotted seatrout caught in any net or seine other than a dip net.

(C) Nets and seines except cast nets and dip nets with mesh constructed of four or less monofilaments twisted or bound together are prohibited.

(D) Drag seines and trammel nets shall not exceed 1,800 feet in length in any one operation and may not measure less than 1-½ inch square mesh, and the battle-wing and pocket shall measure not less than one-inch square mesh.

(E) It is unlawful to use a seine or net, except dip net, cast net, or 20-foot minnow seine in the saltwaters of Nueces County; except in that portion of Corpus Christi Bay more than ½-mile from the main shoreline beginning at the easternmost point of the mainland on the Corpus Christi Naval Air Station and proceeding along the mainline shoreline past the City of Corpus Christi, including the causeway on State Highway 181, and extending eastward past the City of Portland to Ingleside Point, trammel nets, drag seines, and gill nets with

not less than 1-1/2 inch square mesh may be used except during the months of May, June, July, and August.

(F) No nets may be set in a navigation channel in the saltwaters of Nueces County.

(G) For the purpose of these sections, the boundary between Corpus Christi Bay and Redfish Bay is a line extending along the side of Dagger Island and Ransom Island.

(H) Trammel nets and gill nets shall not exceed 1,800 feet in length in any one operation.

(I) In San Antonio Bay, north of the Intracoastal Waterway, three-inch stretched mesh drag seines, trammel nets, and gill nets may be used to take fish.

(J) It is unlawful for any person operating a drag seine in gulf waters to fail to return all aquatic life not utilized to the waters from which taken.

(K) It is unlawful to use a gill net or trammel net in or on the waters of the Gulf of Mexico within the jurisdiction of this state.

(3) Trotlines.

(A) No person may retain or possess red drum or spotted seatrout caught on a trotline other than a sail line.

(B) Trotline (except rubber band lines and sail lines) end stakes shall be marked with burlap or flagging.

(C) Metallic stakes are prohibited.

(D) Panels of top water trotlines shall be marked by having attached to the line midway between all stakes, plastic or cloth measuring not less than one-inch wide with a streamer not less than six inches long clearly visible and above the water.

(E) No trotline (except sail lines) shall exceed 600 feet in length.

(F) Fish taken by means of a sail line may not be sold.

(G) No trotline (including rubber band lines and sail lines) or portions thereof shall be placed closer than 50 feet from any other trotline, or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels.

(H) No trotline or trotline components, including lines and hooks, but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this paragraph.

(I) In Baffin Bay, Alazan Bay, and their tributaries, no more than 10 trotlines with mainlines and hooks on the bottom, not exceeding 100 hooks per line may be used, operated, or fished by one individual.

(J) In Baffin Bay, Alazan Bay, and their tributaries only, snaglines may be used each day of the week from December 1 through May 31.

(4)-(7) (No change.)

(8) Baits.

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

(9) Perch traps.

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

§65.81. Special Coastal Laws.

(a)-(k) (No change.)

(l) Matagorda County: special closed areas. No person may use a strike net, gill net, trammel net, or drag seine for the purpose of taking fish at any time:

(1) in the waters of Matagorda Bay and Pass Cavallo, including all adjoining bays, bayous, lagoons, lakes, canals, and inlets, or in the Gulf of Mexico, south and southwest of a line extending from the Matagorda Club airfield breakwater on the bayside of Matagorda Peninsula to the intersection of the Intracoastal Waterway and the Matagorda Ship Channel, thence southwest along the Intracoastal Waterway to the western boundary of Matagorda County, gulfward to a line extending from the Matagorda lighthouse on Matagorda Island to the gulfward end of the south jetty, which jetty is located in the Gulf of Mexico adjacent to the Matagorda ship channel;

(2) in the waters of the Gulf of Mexico within one mile of any point on the north jetty, which is located in the Gulf of Mexico adjacent to the Matagorda ship channel;

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

§65.91. Penalty for Violation. The penalties for violation of this subchapter are prescribed by Texas Parks and Wildlife Code, §61.901 and §61.903, except shrimp violations which are prescribed by Texas Parks and Wildlife Code, §77.020.

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 June 4, 1982.

TRD-824727

Maurine Ray
Administrative Assistant
Parks and Wildlife Department

Effective date: September 1, 1982

Proposal publication date: March 12, 1982

For further information, please call (512) 479-4806.

TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public
Accounts

Chapter 3. Tax Administration
Subchapter J. Tobacco Products
Division—Admissions Tax

34 TAC §3.151, §3.152

The Office of the Comptroller of Public Accounts adopts the repeal of §3.151 and §3.152 relating to the admissions tax, without changes to the proposed notice of repeal published in the December 22, 1981, issue of the *Texas Register* (6 TexReg 4752).

The admission tax was repealed by the Texas Legislature (1979 Texas Laws, Chapter 456, §1 at 1024, effective September 1, 1979) and the rules are superfluous.

No comments were received on the proposed repeal.

The repeal is proposed under the authority of Texas Civil Statutes, Article 4344 (Supplement 1980) which provides that the comptroller may adopt such regulations not inconsistent with the constitution and laws

as he may deem essential to the speedy and proper assessment and collection of the revenues of the state.

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 June 7, 1982.

TRD-824717 Bob Bullock
Comptroller of Public Accounts

Effective date: June 28, 1982
Proposal publication date: December 22, 1981
For further information, please call (512) 475-1932.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

(Editor's note: Because the Texas Department of Human Resources' rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register Division numbers. However, the rules will appear under the agency's correct title and part.)

ICF/SNF

The following new subchapter was submitted with Texas Department of Human Resources (DHR) adoptions which were serialized in the June 4, 8, and 11 issues of the *Texas Register*. This submission should have appeared as the last DHR entry in the June 8 issue; it was inadvertently omitted.

Food and Nutrition Services

326.29.32.001-.007

The Texas Department of Human Resources adopts new Rules 326.29.32.001-.007, with changes to the proposed text published in the December 4, 1981, issue of the *Texas Register* (6 TexReg 4429).

These rules are justified because federal law requires that standards be enforced in nursing facilities if federal funds are used to pay for care.

The rules will function by describing the standards to be used in providing food and nutrition services as part of the services to recipient-patients in nursing facilities.

The department received 60 comments from individuals and organizations about the rules. The organizations commenting were the Texas Nursing Home Association, the Texas Department of Health, National Living Centers, South Texas Dietetic Association, Austin Dietetic Association, Corpus Christi Dietetic Association, and the Texas Dietetic Association.

The commentors were neither for nor against the rules, but offered recommendations for changes to the rules as proposed. Some comments were received after the end of the comment period. These comments are not included for discussion here; however, they have been considered in the language of the final rules. The department's decisions about incorporation of the comments are stated in the discussion of each comment. Comments were received on the following sections of the rules:

326.29.32.001 (Introduction)—Several commentors requested that the word "palatable" be deleted because of the ambiguity and the lack of a clear definition of the term. The department does not disagree that the word has a subjective meaning; however, the wording is directly from the federal regulations and is retained as proposed.

326.29.32.002 (Staff and Qualifications)—Commentors disagreed with the requirement for a full-time dietetic supervisor. Federal regulations require that a full-time employee be designated as dietetic supervisor in a SNF facility. The wording has been changed to state that a designated dietetic supervisor is responsible for the operation of dietetic services, and in SNF facilities this individual must be employed full time.

326.29.32.003 (Dietary Consultant Requirements)— Many comments were received about this rule. Commentors requested clarification about the number of hours of consultation that are required in combined SNF/ICF facilities. This has been clarified and a method for calculating the required hours in a combined facility has been added. Several commentors requested that the clause in subsection (d) be eliminated which allows consultant hours to be reduced through mutual agreement between the administrator and the consultant, as long as a minimum of eight hours is provided. The department agrees because it would be difficult to determine if the needs of a facility have been met. The number of hours of consultation required has been determined by professional judgment about the needs of recipient-patients.

Allowing a reduction of these requirements without definite guidelines may place the recipient-patients at risk. Therefore, the last sentence of subsection (d) has

been eliminated. The sentence stating that "the needs of the facility must be met" has been changed to "the needs of the recipient-patients must be met" and has been added to subsection (c). It is the recipient-patients who have needs, rather than the facility itself, and since this statement refers to consultation hours, it is more appropriate in subsection (c).

Commentors asked that subsection (e) be changed to not require facilities which employ a registered or qualified dietician to have contracts. The department agrees. Many facilities are owned by organizations which employ qualified or registered dieticians who serve as consultants to several facilities in the chain. In those situations, signed contracts are not necessary. The wording has been changed to reflect these situations.

Commentors asked that the first words of subsection (f), "If consultant services are used..." be eliminated. The department agrees that this clause is unnecessary and it has been eliminated.

326.29.32.004 (Documentation Requirements for Dietary Consultant)— Commentors asked for clarification as to what documentation is referred to in subsection (a). The department agrees that the reference is unclear and that it refers to two different kinds of documentation. The rule has been revised by deleting the first line of subsection (b) and adding subsection (c) which more clearly describes the required revisions and documentation about recipient-patients' orders for special diets and fluids.

326.29.32.006 (Menus and Nutritional Adequacy)— For subsection (a), a commentor suggested that the rule does not require that the written menu has to be followed. The department has amended the rule to state that the menus followed in every facility must be written at least one week in advance and meet the

other stated requirements. The facilities must be given the option of menu substitutions which are often necessary or desirable. Substitutions are addressed in subsection (f). For subsection (b) a commentor suggested that current rules state that "approval" of a diet manual is necessary, not "recommendation" by the state survey agency. This is not true. Current rules state "recommended by the state survey agency." This rule is worded as it has been in the previous standards and remains the same. For subsection (d) a commentor pointed out that in SNF facilities, federal regulation requires that between meal and bedtime snacks be provided. In ICF facilities they are optional. The department agrees; therefore, the rule is revised to state that distinction.

For subsection (j) commentors stated that current rules require facilities to keep a two-day supply of perishable foods, and that this should be added. The department agrees and has added this requirement to ensure that fresh foods will be readily available at all times for meals served to recipient-patients. Commentors also asked that the five-day supply requirement of staple foods be changed to a seven-day supply as in the previous standards. The department believes that a five-day supply is adequate since most facilities are close to a grocery supply and can get the replenishments quickly. The requirement remains as proposed. One commentor suggested that if facilities have substantiated complaints about the quality of food that they should not be allowed to make any menu substitutions. The department believes that the rules should not be written in such a way as to imply imposed penalties. The survey agency determines what action to take if complaints are substantiated or if standards are not met. Therefore, this suggestion is not incorporated into the standards. For subsection (m) commentors suggested that this rule should state that recipient-patients should be helped with their meals promptly after their trays are served. The department agrees and has added the words "...after the tray is served" to the last sentence. This will ensure that recipient-patients are assisted before their meals become cold. For subsection (o) many commentors objected to the requirement that any diet deviations from physician's orders must be promptly reported to the director of nurses who must notify the physician and the administrator, and must document the deviation in a separate administrative record. Commentors see this as an imposition on the physician's time and as unrealistic in terms of the numbers of deviations that are likely to occur in a facility. The department agrees and has deleted the requirement. It is adequately addressed in Rule 326.29.31.012, Charge Nurse Responsibilities. One commentor said this rule is unreasonable because staff working in dietary areas of facilities do not have sufficient knowledge of food value to make suitable substitutions. The department believes that substitutions in therapeutic diets are the responsibility of staff who do have this kind of knowledge and that decisions about substitutions should not be made by staff who

are not so qualified. Placing decisions about substitutions in therapeutic diets in the hands of staff who are not qualified to make the decisions not only places the recipient-patient at risk, but places undue responsibility on staff who are not prepared or paid to assume it. The requirement remains as proposed.

326.29.32.007 (Food Storage and Preparation)—Several commentors said this rule is unnecessary and redundant because the requirement is clearly specified in the state nursing home licensing requirements. The department agrees and has deleted paragraphs (1) through (8) of this rule. The revised rule states that all foods must be stored, prepared, and distributed under hygienic and sanitary conditions as required by the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

The department made minor technical wording changes other than those made based on public comment.

New Rules 326.29.32.001-.007 are adopted under Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

.001. Introduction. The facility must have written, implemented procedures which ensure that the food and nutrition service is operating in a safe, sanitary, and efficient manner. The facility must provide daily meals which are adequate in amount, palatable, prepared and transported in a sanitary manner, and served in accordance with accepted professional practices. Daily meals must meet the regular and therapeutic diet needs of the recipient-patients. The facility must have a plan for obtaining, preparing, and serving meals in case of emergencies which might delay or interrupt supplies or contracted food service.

.002. Staff and Qualifications.

(a) The designated dietetic service supervisor is responsible for the overall operation of the dietetic service. In a SNF, this individual must be employed full time. If the supervisor is not a qualified dietitian, he must receive consultation from a qualified dietitian. The dietetic service supervisor must participate in regular conferences with the administrator and supervisors of recipient-patient services in the development of the recipient-patient's plan of care. The dietetic service supervisor should make recommendations and assist in developing personnel policies.

(b) A dietetic service supervisor must be a qualified dietitian or:

- (1) an associate of arts graduate in nutrition and food management (dietary technician);
- (2) a graduate of a dietetic technician or dietetic assistant training program (correspondence or classroom), approved by the American Dietetic Association;

(3) a person who has completed a state agency approved 90-hour course in food service supervision;

(4) a person with a bachelor's degree with major studies in food and nutrition, dietetics, or food service management; or

(5) a person with the military training and experience to qualify for any of the educational requirements listed in subsection (b)(1)-(4). Persons with qualifications listed in subsection (b)(1)-(5) must have frequently scheduled consultation, as defined by the state survey agency, from a qualified dietary consultant.

(c) The facility must employ enough support personnel trained in the preparation and service of food, to provide food and nutrition service.

(1) The food service department must be staffed at least 12 hours daily.

(2) Food service employees must be trained to perform assigned duties and participate in selected in-service education programs.

(3) Weekly staffing schedules must be posted.

.003. Dietary Consultant Requirements.

(a) A dietary consultant must be a dietitian who:

(1) is registered by the American Dietetic Association under its current requirements, has at least one year supervisory experience in dietetic service of a health care institution, and participates annually in continuing dietetic education; or

(2) has a baccalaureate degree with major studies in food and nutrition, dietetics or food service management, as determined by the state survey agency; has at least one year supervisory experience in dietetic service of a health care institution; and participates annually in continuing dietetic education.

(b) To meet the annual dietetic educational requirement, each nonregistered consultant must complete a minimum of 15 clock hours of state-approved dietetic courses. Attendance must be reported to the Texas Department of Health, Bureau of Long Term Care.

(c) The facility must ensure that dietary consultant hours are provided as follows:

Dietary Consultant Hours Per Month

SNF	ICF	ICF II	Facility Population
8 hours	8 hours		60 patients or under
4 hours	2 hours		each additional 30 patients or fraction thereof
		4 hours	any number of patients

In a facility with more than one level of care, the first eight hours of required consultation are applied to the first 60 patients with the highest level of care. Calculation is as follows: In a combined SNF/ICF facility, the hours of consultation for the skilled patients are calculated as specified, and the hours for the ICF patients are calculated at the rate of two hours for each 30 patients. The two figures are added together to reach the total number of hours required for the entire facility. A facility with 90 SNF patients and 60 ICF patients would require 12 hours of consultation for the skilled patients and four hours for the intermediate patients, or a total of 16 hours. The facility must ensure that the needs of the recipient-patients are met.

(d) To meet the consultant hour requirement, time can be accrued and counted exactly as rendered.

(e) The facility must outline consultant services by a signed contract. This does not apply to facilities which employ a registered dietitian or qualified dietitian on their staff.

(f) A consultant's visits must be long enough to allow:

- (1) continuing liaison with medical and nursing staff.
- (2) nutritional assessment and recipient-patient counseling.
- (3) guidance to the food and nutrition service supervisor and staff.
- (4) approval of all menus.
- (5) participation in the development or revision of dietetic policies and procedures.
- (6) planning and conducting in-service education programs.

.004. Documentation Requirements for Dietary Consultant.

(a) The facility must maintain documentation reflecting consultation with a dietitian and make it available for review by federal and state representatives. The facility must include at least the following in the documentation:

- (1) name of consultant dietitian.
- (2) dates of consultant's visits.
- (3) assessment of food service, including all special diets ordered.
- (4) review of fluids for nutritional and hydration purposes according to physician's orders.

(b) The facility must ensure that the documentation of the consultation is signed and dated at each visit.

(c) As recipient-patients' needs change, the facility must revise and document special diets and orders for fluids.

.005. Hygiene.

(a) Food service personnel must be in good health and practice hygienic food-handling techniques.

(b) Food service personnel must wear clean, washable garments, hair coverings or clean caps, and have clean hands and fingernails.

(c) In addition to the requirements stated in Rule 326.29.20.006, routine health examinations must meet any local, state, or federal codes for food service personnel.

(d) When food handlers' permits are required, they must be current.

(e) Persons with symptoms of communicable diseases or open infectious wounds may not work.

.006. Menus and Nutritional Adequacy.

(a) Every facility must ensure that menus followed must be written at least one week in advance and designed to meet nutritional and special dietary needs of recipient-patients in accordance with the attending physician's orders. To the extent medically possible, the menu should meet the recommended dietary allowances of the Food and Nutrition Board, National Research Council, National Academy of Sciences.

(b) The facility must ensure that a current diet manual, recommended by the state survey agency, is readily available to food service personnel and the supervisor of nursing service.

(c) For survey purposes, the facility must retain, for 30 days, records of menus served and food purchased.

(d) The facility must serve at least three meals or their equivalent daily with no more than 14 hours between a substantial evening meal and breakfast. A SNF must offer nourishing between meal or bedtime snacks, to the extent medically possible. In ICFs, these snacks should be offered routinely or on request of the recipient-patients.

(e) The facility must post the current week's menu in the dietary department so employees responsible for purchasing, preparing, and serving foods can use it.

(f) The facility must vary menus from week to week. The facility must serve food in adequate amounts and adjust food for seasonal changes. The facility does not need to note substitutions on the menu but must record substitutions after service and keep them on file for 30 days.

(g) The facility must consider the general age group in planning menus.

(h) A list of recipient-patients receiving special diets and a record of their diets will be kept in the dietary area for at least 30 days.

(i) A file of tested recipes, adjusted to proper yield, should be kept in the dietary area.

(j) The dietary department must keep a three-day supply of staple foods and a two-day supply of perishable foods at all times. The facility is allowed the flexibility to use food on hand to make substitutions at any intervals as long as comparable nutritional value is maintained. The facility must document the substitution on the day of use.

(k) The facility must consider the food preference of recipient-patients if not in conflict with physician's orders. The facility must ensure that food is ground or chopped to meet individual needs. If a recipient-patient refuses the food served, the facility must offer reasonable substitutions of comparable nutritional content.

(l) The facility must have equipment and procedures to keep food at proper temperature during service.

(m) The facility must have table service for all who can and will eat at the table, including wheelchair recipient-patients. Recipient-patients who need help eating must be assisted promptly after the tray is served.

(n) The facility must ensure that trays for bedfast recipient-patients rest on firm supports such as over-bed tables. The facility must provide sturdy tray stands of proper height to recipient-patients able to be out of bed for their meals. The facility must provide adaptive self-help devices, prescribed by the attending physician, to contribute to the recipient-patients' independence in eating.

(o) The facility must prepare and serve therapeutic diets, additive or restrictive, as prescribed by the attending physician.

(1) The facility must ensure that therapeutic diet orders are planned, prepared, and served with supervision or consultation from a qualified dietitian.

(2) Persons responsible for the therapeutic diets must have sufficient knowledge of food value to make suitable substitutions if necessary.

.007. Food Storage and Preparation. All foods must be stored, prepared, and distributed under hygienic and sanitary conditions, as required by the Texas Department of Health Minimum Licensing Standards for Nursing Homes.

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 May 26, 1982.

TRD-824483 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982
Proposal publication date: December 4, 1981
For further information, please call (512) 441-3355,
ext. 2037.

Pharmacy Services Reimbursement 326.40.08.001

The Texas Department of Human Resources adopts amendments to Rule 326.40.08.001 with a minor editorial change to the proposed text, as published in the December 8, 1981, issue of the *Texas Register* (6 TexReg 4538). These amendments will be effective September 1, 1982.

The department adopts changes regarding reimbursement for pharmaceutical services provided to eligible recipients of the Texas Medical Assistance Program under Title XIX. The changes are cost containment measures intended to maintain fiscal integrity for the program. Rule 326.40.08.001 (a) and (e), provides for the establishment of a co-payment system as allowed in federal regulations, 42 Code of Federal Regulations 447.54. This system allows the department to require Medicaid recipients to share the cost of covered pharmacy services by paying a nominal prorated amount for each prescription directly to the provider of service.

During the comment period which ended January 7, 1982, three comments were received on the amendments. One written comment from an individual favored the implementation of a co-pay requirement rather than decreasing the number of monthly prescriptions. A second comment, from West Texas Legal Services, opposed all the proposals. The proposals were described as short-sighted attempts to

save money which would eventually result in greater expenditures in other Medicaid programs. It was suggested that the department improve its identification of abusive providers of medical and pharmaceutical services rather than implement these proposals. The third comment, from the Texas Nursing Home Association (TNHA), opposed both a co-pay requirement and a decrease in the number of monthly prescriptions on the basis that these provisions would create administrative burdens and medical problems due to nonavailability of medications. It was recommended that the department consider a fee incentive to encourage generic drug substitution as a means of effecting cost savings rather than implement this proposal.

In addition to those comments, three groups and two individuals presented testimony at a public hearing held January 5, 1982, in Austin. The Texas Pharmaceutical Association (TPA) opposed a co-pay requirement on the basis that it represented a "tax" on those least able to pay and suggested that more appropriate savings could be realized by the department's encouraging drug product selection through several alternative approaches. The group urged the department to expand its efforts to identify and curb recipient misutilization of program benefits. The Texas Federation of Drug Stores suggested that implementation of a prescription supply limit and encouragement of the use of generic drugs offered a potential for savings which would permit the department to avoid limiting the number of prescriptions or requiring a co-payment by recipients. The group did, however, urge the department to adopt a mandated uniform fixed co-pay amount if co-pay were found to be necessary. The third group (TNHA) had previously submitted written comments and used this opportunity to reiterate its opposition to the co-pay requirement. The two individuals who testified were both opposed to the co-pay requirement and suggested that the department study alternatives to realize the potential savings from the use of generic drugs.

Because the legislative appropriation was less than requested, cost containment measures must be adopted to ensure that the Vendor Drug Program does not exceed the limits of its appropriation. The department acknowledges that a co-pay requirement might be a financial burden for some recipients, however, the department does not agree that this requirement would cause recipients to forego the use of needed medications. The sharing of costs is an effective means of maintaining recipient access to needed medication and, at the same time, controlling overutilization by increasing recipient awareness that program benefits are costly and that unwarranted use of those benefits should be curtailed. The department considers this approach preferable in achieving the necessary cost savings rather than reducing the number of prescriptions. In addition, the department acknowledges that utilization review programs, such as the Recipient Health Care Education Program, have lowered Medicaid costs and options for expansion of these programs are being developed at this time.

While it is acknowledged that the increased use of generic drugs can result in substantial cost savings for the program, the department does not agree, at this time, that the rulemaking process is the appropriate channel for effecting this change in the practice of pharmacy. The department, however, is exploring options for the encouragement of drug substitution. The ad hoc subcommittee previously established by the Medical Care Advisory Committee to consider and recommend different methods of effecting cost savings for the program has been reconvened. The subcommittee has been asked to submit appropriate recommendations and supporting rationales in favor of or in opposition to generic drug substitution.

.001. Legend and Nonlegend Medication. (For all medication, legend and nonlegend, covered by the Vendor Drug program and appearing in the Texas Drug Code Index and Supplements.)

(a) Reimbursement to the pharmaceutical provider will be based upon acquisition cost, verifiable by invoice audit, plus the department's currently established dispen-

sing fee per prescription, or the usual and customary price charged the general public, whichever is lower, minus any co-payment made directly to the provider by the recipient as may be required by the department.

(b)-(d) No change.)

(e) The amount of recipient co-payment, as allowed by federal regulation, is established by the department at 50 cents per prescription. The provider must collect the co-payment from the recipient.

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 June 8, 1982.

TRD-824778

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: September 1, 1982
Proposal publication date: December 8, 1981
For further information, please call (512) 441-3355,
ext. 2037.

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. Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register*. Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary. Published notices concerning county agencies include only the date, time, and location of the meeting. These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed.

Any of the governmental entities named above must have notice of an emergency meeting, or 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. However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published.

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. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Open Meetings

Texas Alcoholic Beverage Commission

Monday, June 21, 1982, 10:30 a.m. The Texas Alcoholic Beverage Commission will meet in Suite 210, Jefferson Building, 1600 West 38th, Austin. Items on the agenda include approval of minutes of May 1982 meeting; administrator's and staffs' report of agency activity; and informational report from the Distilled Spirits Council of the United States.

Contact: W. S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: June 8, 1982, 1:15 p.m.
TRD-824749

Office of the Governor

Friday, June 18, 1982, 9 a.m. The Governor's Task Force on State Personnel Management of the Office of the Governor will meet in Rooms 202-203, State Bar of Texas, Texas Law Center, 1414 Colorado Street, Austin. Items on the agenda include opening remarks by Mark Rigg, chairman; review of the following subcommittee progress reports: benefits—Lee Jackson, chairman, compensation and classification—Tom Sprague, chairman, performance planning and evaluation—Gary Hughes, chairman, administration—Tom Keel, chairman, and management training—Jim

Maloney, chairman; and concluding remarks by Mark Rigg, chairman.

Contact: Mark Rigg, 2828 North Haskell, Dallas, Texas 75204, (214) 828-7191.

Filed: June 8, 1982, 2:36 p.m.
TRD-824751

Tuesday, June 22, 1982, 7 p.m. The Crime Stoppers Advisory Council of the Office of the Governor will meet at the Texas Crime Prevention Institute on the campus of Southwest Texas State University in San Marcos, Texas. Items on the summarized agenda include a welcome by the university officials; approval of minutes; report on local crime stoppers programs; status reports on current operations of Crime Stoppers Advisory Council; and discussion of quarterly meetings.

Contact: Steve Cherry, P.O. Box 12429, Austin, Texas 78711, (512) 475-3001.

Filed: June 8, 1982, 2:20 p.m.
TRD-824739

Texas Health Facilities Commission

Friday, June 18, 1982, 9:30 a.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West

38th Street, Austin. According to the agenda summary, the commission will consider the following:

Notice of Intent to Acquire an Existing Health Care Facility
Care One, Inc., Tyler
AN82-0513-020

Certificate of Need
San Angelo Dialysis Center, San Angelo
AS81-1030-025

Reissuance of Certificate of Need
Champ Traylor Memorial Hospital, Port Lavaca
AH81-0622-002R(042282)

Contact: John R. Neel, P.O. Box 15023, Austin, Texas 78761, (512) 475-6940.

Filed: June 9, 1982, 9:14 a.m.
TRD-824771

Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Friday and Saturday, June 18 and 19, 1982. The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet in Big Bend Rooms A-E, Hyatt Regency Hotel, 208 Barton Springs Road, Austin. Items on the agenda include state exams to be held Friday at 8:30 a.m. and 1:30 p.m., and Saturday at 8:30 a.m. At 10 a.m. on

Saturday, the board will meet to consider approval of minutes of May 19, 1982; action on examinations; University of Texas at Dallas; Callier Speech and Hearing Center; selling hearing aids; discussion by Charles Beaty on earmolds to be used with auditory training equipment; appointment of Nominating Committee; committee reports; executive director's report; president's report; and date for February board meeting.

Contact: Wanda F. Stewart, Penthouse Apartments, Suite 105, 1212 Guadalupe, Austin, Texas 78701, (512) 475-3429.

Filed: June 9, 1982, 9:03 a.m.
TRD-824769

Texas Industrial Accident Board

Friday, June 18, 1982, 9:00 a.m. The Texas Industrial Accident Board will meet in Room 102, first floor, 200 East Riverside Drive, Austin. According to the agenda, the Benefits Subcommittee of the Industrial Accident Board Legislative Advisory Committee will meet to discuss changes in the benefits to the injured worker and beneficiaries. This will encompass Article 8306-8309.

Contact: Bill Treacy, P.O. Box 12757, Austin, Texas 78711, (512) 475-3126.

Filed: June 9, 1982, 10:36 a.m.
TRD-824784

Wednesday, June 23, 1982, 9:30 a.m. The Industrial Accident Board will meet in the offices of the state AFL-CIO, 1106 Lavaca, Austin. According to the agenda, the Delivery Subcommittee of the Industrial Accident Board Legislative Committee will meet to discuss emergency authority of the board to deal with the problem of slow or late delivery of benefits to the injured worker and beneficiaries and carrier authorization of medical benefits.

Contact: Bill Treacy, P.O. Box 12757, Austin, Texas 78711, (512) 475-3126.

Filed: June 8, 1982, 2:22 p.m.
TRD-824754

Thursday, June 24, 1982, 9:30 a.m. The Texas Industrial Accident Board will meet in the conference room, offices of Texas Workers' Compensation Assigned Risk Pool, 200 One La Costa, 1016 La Posada Drive, Austin. According to the agenda, the Administrative Subcommittee of the Industrial Accident Board Legislative Committee will meet to discuss whether or not legal assistants or administrative law judges should or should not be added to the staff

of the board in order to improve its efficiency.

Contact: Bill Treacy, P.O. Box 12757, Austin, Texas 78711, (512) 475-3126.

Filed: June 8, 1982, 2:21 p.m.
TRD-824753

Lamar University

Wednesday, June 9, 1982, 10:30 a.m. The Board of Regents of Lamar University made revisions to the agenda of an emergency meeting held at Lamar University Orange, 410 Front Street, Orange. According to the revised agenda, the board considered approval of minutes (April 14 and May 15, 1982); president's reports; financial reports for March and April, 1982; approval of peace officers appointments; approval of Finance/Audit Committee recommendations-revision parking fees and regulations for 1982-1983; approval of Building Committee recommendations on bids received; and approval of annual application for federally funded vocational education programs-school year 1982-1983. The board also met in executive session to review legal and personnel matters. The emergency status was necessary because this was the only date the board could get a quorum to approve bids for construction.

Contact: Andrew J. Johnson, P.O. Box 10014, Beaumont, Texas 77710, (713) 838-8403.

Filed: June 8, 1982, 2:15 p.m.
TRD-824788

Board of Pardons and Paroles

Monday-Friday, June 21-25, 1982, 9 a.m. The Board of Pardons and Paroles will meet at 711 Stephen F. Austin Building, Austin. According to the agenda, the board will review cases of inmates for parole consideration; act on emergency relieve requests and other acts of executive clemency; review reports regarding persons on parole; review procedures affecting the day-to-day operation of support staff; review and initiate needed rule changes relating to general operation, executive clemency, parole and all hearings conducted by this agency and take action upon gubernatorial directives.

Contact: John W. Byrd, 711 Stephen F. Austin Building, Austin, Texas, (512) 475-3363.

Filed: June 8, 1982, 2:21 p.m.
TRD-824756

Public Utility Commission of Texas

Friday, June 18, 1982, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin, for a prehearing conference in Docket 4516—application of Guadalupe Electric Cooperative, Inc., for a systemwide rate increase.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 8, 1982, 2:18 p.m.
TRD-824752

Monday, July 26, 1982, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin, for a hearing on the merits in Docket 4466—application of Day Water Company for a rate increase within Hood and Parker Counties.

Contact: Carolyn E. Shellman, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 10, 1982, 9:07 a.m.
TRD-824799

Structural Pest Control Board

Friday, June 18, 1982, 8:30 a.m. The Structural Pest Control Board has made an addition to the agenda of a meeting to be held in Suite 123, Building H, 5555 North Lamar, Austin. According to the revised agenda, at 11:15 a.m., the board will consider a motion for rehearing of the Pest Control Company case.

Contact: Charlie Chapman, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751, (512) 454-3617.

Filed: June 8, 1982, 2:18 p.m.
TRD-824757

Sunset Advisory Commission

Wednesday-Friday, June 23-25, 1982, 10 a.m. daily. The Sunset Advisory Commission will meet in the Senate Chamber, State Capitol. Agenda items are as follows:

June 23, 1982. Staff presentation at 10 a.m., followed by agency and other testimony on:

Texas Commission on Interstate
Cooperation

Texas Commission on Uniform State
Laws

Office of Interstate Oil Compact
Commissioner for Texas

Office of Interstate Mining Compact
Commissioner for Texas

Office of Southern Interstate Nuclear
Compact Board Member for Texas

Staff presentation at 1:30 p.m., followed by
agency and other testimony on:

Texas Commission on the Arts
Council for Social Work Certification
Texas Committee on Purchases and
Services of Blind and Severely Disabled
Persons

June 24, 1982. Staff presentation at 10
a.m., followed by agency and other
testimony on:

Texas Advisory Commission on
Intergovernmental Relations
Office of State-Federal Relations
Advisory Council on Technical-
Vocational Educational
State Securities Board

June 25, 1982. Staff presentation at 10
a.m., followed by agency and other
testimony on:

Texas Historical Resources Development
Council
Antiquities Committee
Texas Historical Commission

The order of public testimony on the agen-
cies may be shifted depending on the
number of persons who want to testify.

Contact: Cindy Unsell, 304 Reagan
Building, Austin, Texas, (512) 475-1718.

Filed: June 9, 1982, 11:25 a.m.
TRD-824783

State Commission on Standards for the Teaching Profession

Wednesday, June 23, 1982, 9 a.m. The
Committee on Certification Programs and
Requirements of the State Commission on
Standards for the Teaching Profession will
meet on the 13th floor, Classroom and
Faculty Building, Texas Woman's Univer-
sity, Denton. Items on the agenda include
finalization of plans for academic
specialization workshop; report on plans for
professional development workshop, July
16-18, 1982; report on plans for study of
certificate programs in occupational educa-
tion; additional information concerning
basic skills tests, pursuant to 19 TAC
§141.4; and individual programs from
Hardin-Simmons University, Houston Bap-
tist University, Southern Methodist Univer-
sity, Tarleton State University, Texas
Wesleyan College, Texas Woman's Univer-
sity, The University of Texas at Arlington,
and The University of Texas at San
Antonio.

Contact: Dr. Edward M. Vodicka, 201 East

11th Street, Austin, Texas 78701, (512)
475-0164.

Filed: June 8, 1982, 4:14 p.m.
TRD-824760

Thursday, June 24, 1982, 5:30 p.m. The
Committee on Standards and Procedures
for Institutional Approval of the State
Commission on Standards for the Teaching
Profession will meet on the 13th floor,
Classroom and Faculty Building, Texas
Woman's University, Denton. Items on the
agenda include discussion of proposed
undergraduate and graduate insitutional
standards.

Contact: Dr. Edward M. Vodicka, 201 East
11th Street, Austin, Texas 78701, (512)
475-0164.

Filed: June 8, 1982, 4:15 p.m.
TRD-824759

Friday, June 25, 1982, 1 p.m. The State
Commission on Standards for the Teaching
Profession will meet on the 13th floor,
Classroom and Faculty Building, Texas
Woman's University, Denton. Items on the
agenda summary include college/university
reports—individual programs from Hardin-
Simmons University, Houston Baptist
University, Southern Methodist University,
Tarleton State University, Texas Wesleyan
College, Texas Woman's University, The
University of Texas at Arlington, the
University of Texas at San Antonio; and
committee reports—Committee on Stan-
dards and Procedures for Institutional Ap-
proval (discussion of proposed
undergraduate and graduate institutional
standards); Committee on Certification
Programs and Requirements (finalization of
plans for academic specialization workshop;
report on plans for professional develop-
ment workshop, July 16-18, 1982; report on
plans for study of certificate programs in
occupational education; additional infor-
mation concerning basic skills tests, pur-
suant to 19 TAC §141.4; and individual
programs).

Contact: Dr. Edward M. Vodicka, 201 East
11th Street, Austin, Texas 78701, (512)
475-0164.

Filed: June 8, 1982, 4:15 p.m.
TRD-824758

Texas A&M University System

Wednesday, June 16, 1982, 9:15 a.m. The
Audit Committee of the Texas A&M
University Board of Regents will meet in
Room 201, System Administration
Building, College Station. According to the

agenda, the committee will formulate
policies for participation in audit exit con-
ferences conducted by the state auditor's
staff, consider any other business that may
properly be brought before the committee,
participate in the audit exit conferences for
the Business Office for Engineering Ser-
vices, the Texas Agricultural Extension Ser-
vice, the Rodent & Predatory Animal Con-
trol Service, and the Texas Agricultural Ex-
periment Station. A quorum of the board
is not anticipated.

Contact: Robert G. Cherry, Texas A&M
University System, College Station, Texas
77843-1123, (713) 845-4334.

TRD-824787

Texas State Technical Institute

**Sunday and Monday, June 20 and 21, 1982,
2 p.m. and 8:15 a.m. respectively.** The
Texas State Technical Institute Board of
Regents will meet in the executive offices,
TSTI, Waco. Items on the agenda include
approval of minutes; classes meeting with
less than 10 students; holiday schedule; re-
quest for budget changes; partial transfer
of appropriations for faculty salaries from
TSTI-Amarillo to TSTI-Waco; lease of
Hangar 11-1 and related facilities to Avia-
tion Technical Support, Inc., at TSTI-
Waco; lease agreement with Starfire Enter-
prises, Inc., for Building 9508 at TSTI-
Amarillo; sale of excess property at TSTI-
Sweetwater; authorization to advertise for
competitive bids and award a contract for
an addition to the Construction Trades
Building at TSTI-Waco; final plans and
specifications for additional construction on
the Electrical Trades Center at TSTI-
Waco; final plans and specifications for ad-
ditional construction on the Technical
Studies Center at TSTI-Waco; award of
contract for modification of Industrial
Technology Center at TSTI-Waco;
authorization to award a contract for
modification of the Building Trades Annex
at TSTI-Waco; frontage development along
Loop 499 at TSTI-Harlingen; authorization
to take bids and award a contract for con-
struction of the Graphics Communication
Building at TSTI-Sweetwater; operating
budget for fiscal year 1983; request for
legislative appropriation for the biennium
beginning September 1, 1982; award a con-
tract for removal of 31 buildings at TSTI-
Amarillo; Student Center Revenue bond
issue at TSTI-Waco, and other business.

Contact: Theodore A. Talbot, TSTI
System, Waco, Texas, (817) 799-3611, ext.
385.

Filed: June 10, 1982, 9:05 a.m.
TRD-824798

Texas Water Commission

Monday, June 14, 1982, 10 a.m. The Texas Water Commission met in emergency session in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. The commission conducted a hearing regarding emergency order issued to W. Brown Custom Builders on June 8, 1982, requiring the owner of the dams authorized by Permit 3776 to dewater dams and reservoirs authorized by Permit 3776. The emergency session was necessary due to the structural unsoundness of the dams.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 9, 1982, 3:18 p.m.
TRD-824790

Wednesday, June 23, 1982, 2 p.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on complaint filed by Richard P. Townsend, M.D., against Phil Stover, a licensed irrigator.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 8, 1982, 11:04 a.m.
TRD-824746

Wednesday, July 14, 1982, 10 a.m. The Texas Water Commission will meet in Room 124A, 1700 North Congress, Stephen F. Austin Building, Austin. According to the agenda, the commission will conduct a hearing regarding adjudication of all claims of water rights in the Canadian River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 8, 1982, 11:02 a.m.
TRD-824748

Friday, July 16, 1982, 10 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on Application 4219 of The City of Rusk for a permit to maintain a dam on unnamed tributary of Box Creek, tributary of College Creek, and tributary of Neches River, Neches River Basin, for municipal and irrigation purposes in Cherokee County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 8, 1982, 11:04 a.m.
TRD-824745

Wednesday, July 21, 1982, 9 a.m. The Texas Water Commission will meet in the

County Agricultural Building auditorium, Calhoun County Fairgrounds, County Road 101, Port Lavaca. According to the agenda summary, the commission will conduct a hearing regarding application by Lone Star Waste Disposal Service, Inc., P.O. Box 97, Refugio, Texas 78577, to the Texas Department of Water Resources for permits (Proposed Permits WDW-203 and WDW-204) to drill and operate two commercial, hazardous (Class I) waste disposal wells and to operate associated commercial, Class I and II solid waste storage and processing facilities. The wastewaters to be disposed of can be generally classified as: caustic wastes; organic wastes; aqueous solvents; acid wastes; and inorganic aqueous wastes. It is proposed that the cumulative volume of wastewater injected in both wells shall not exceed 15,120,000 gallons per month at a cumulative maximum injection rate not to exceed 350 gallons per minute. The proposed injection zone is the Upper Frio Formation in the approximate subsurface interval between 5,500 and 6,400 feet.

Contact: Lee Mathews, P.O. Box 13087, Austin, Texas 78711, (512) 475-1311.

Filed: June 9, 1982, 3:19 p.m.
TRD-824805

Wednesday, July 21, 1982, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will conduct a hearing on petition for organization of Fort Bend County Municipal Utility District 45 containing 2,369 acres of land.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: June 8, 1982, 11:05 a.m.
TRD-824744

**Texas Department of Water
Resources**

Thursday, June 17, 1982, 1 p.m. The Texas Water Development Board of the Texas Department of Water Resources will meet in Room 118, Stephen F. Austin Building, Austin. According to the agenda summary, the board will consider the following: approval of minutes; election of a vice chairman; Development Fund manager's reports; extension of loan commitments to the Town of Flower Mound and City of Granbury; financial assistance to the Red River Authority of Texas and Cities of Marlin, Canton, and Mathis; approval of a grant increase for the City of Brownsboro; contracts to perform the site investigation/feasibility work outlines in the Bio-

Ecology and French Limited Cooperative Agreements and contracts with EPA regarding emergency cleanup activities; adoption of a permanent rule amending 31 TAC §351.51, concerning Harris County FWSD 63's regionalization area description and amendments to Chapter 321 relating to Construction Grants Program and the State Project Priority System, and approval of the department's operating budget for fiscal year 1983 and budget request for fiscal years 1984-1985.

Contact: Harvey Davis, P.O. Box 13087, Austin, Texas 78711, (512) 475-3187.

Filed: June 8, 1982, 11:02 a.m.
TRD-824747

**Regional Agencies
Meetings Filed June 8**

The Region XII Education Service Center, Board of Directors, will meet at 401 Franklin Avenue, Waco, on June 17, 1982, at 7:30 p.m. Information may be obtained from Mack W. Mullins, P.O. Box 1249, Waco, Texas 76703.

The Region XIV Education Service Center, Board of Directors, will meet at 1850 State Highway 351, Abilene, on June 17, 1982, at 5 p.m. Information may be obtained from Dr. Thomas Lawrence, Route 1, Box 70A, Abilene, Texas 79601, (915) 676-8201.

The Interim Regional Transportation Authority, Special Service Needs Committee met in emergency session in Suite 201, Love Field Terminal Building, Dallas, on June 8, 1982, at 4:30 p.m. The following committees and subcommittees also met at the same location on June 10, 1982, at the following times:

Transportation Service Modes Subcommittee—7:30 a.m.

Transportation Service Areas Subcommittee—9 a.m.

Budget and Implementation Committee—2 p.m.

Information may be obtained from Eloise Hajek, Lock Box 12, Love Field Terminal Building, Dallas, Texas 75235, (214) 358-3217.

The Limestone County Appraisal District, Board of Directors, met in Room 6, Mexia City Hall, Mexia, on June 14, 1982, at 7 p.m. Information may be obtained from Clydene Hyden, P.O. Box 266, Mexia, Texas 76667, (817) 562-5385, ext. 35.

The West Central Texas Municipal Water District will meet in Room 314, Cypress

Building, 174 Cypress Street, Abilene, on June 24, 1982, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas, 79604, (915) 673-8254.

TRD-824743

Meetings Filed June 9

The Concho Valley Council of Governments, Executive Committee, will meet at 5002 Knickerbocker Road, San Angelo, on June 16, 1982, at 7 p.m. Information may be obtained from Robert R. Weaver, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666.

The Sabine Valley Regional Mental Health and Mental Retardation Center, Board of Trustees, will meet at Highway 80 West at Sun Camp Road, Longview, on June 17, 1982, at 7:30 p.m. Information may be obtained from Frances H. Willis, P.O. Box 6800, Longview, Texas 75608, (214) 297-2191.

The Region IX Education Service Center, Board of Directors, will meet at 301 Loop 11, Wichita Falls, on June 17, 1982, at 2 p.m. Information may be obtained from Dr. H. M. Fullerton, 301 Loop 11, Wichita Falls, Texas 73605, (817) 322-6928.

The Region XI Education Service Center, Board of Directors, will meet at 3001 North Freeway, Fort Worth, on June 22, 1982, at noon. Information may be obtained from R. P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311, ext. 102.

The Grayson County Appraisal District, Board of Directors, will meet in the Commissioner's Courtroom, Grayson County

Courthouse, Sherman, on June 16, 1982, at noon. Information may be obtained from Rita Neill, 124 South Crockett, Sherman, Texas 75090, (214) 893-9673.

The Houston-Galveston Area Council, Board of Directors, will meet in the large conference room, 3701 West Alabama, Houston, on June 15, 1982, at 9:30 a.m. Information may be obtained from Jack Steele, P.O. Box 22777, Houston, Texas 77027.

The Lower Colorado River Authority, Board of Directors Audit Committee, met in emergency session at 3700 Lake Austin Boulevard, Austin, on June 11, 1982, at 9 a.m. Information may be obtained from Elof H. Soderberg, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.

The West Central Texas Council of Governments, Manpower Advisory Committee and Private Industry Council, will meet in the central office meeting room, 1025 East North 10th Street, Abilene, on June 17, 1982, at 10 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604.

TRD-824770

Meetings Filed June 10

The Archer County Appraisal District, Appraisal Review Board, will meet in the Archer County Courthouse, Archer City, on June 21, 1982, at 10 a.m. Information may be obtained from Pat Wachsmann, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2171.

The Bell County Appraisal District, Appraisal Review Board, will meet in the Commissioners' Courtroom, second floor, Bell

County Courthouse, Belton, on June 23, 1982, at 9 a.m. and 1:30 p.m. Information may be obtained from Tolly Moore, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521, ext. 294.

The Harris County Appraisal District, Board of Directors, met at 3737 Dacoma, Houston, on June 14, 1982, at 2 p.m. Information may be obtained from Searcy German, P.O. Box 10975, Houston, Texas 77292, (713) 683-9200.

The Hockley County Appraisal District, Appraisal Review Board, will meet in the Women's Building, Hockley County Fairgrounds, Levelland, on June 29, 1982, at 9 a.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The Jack County Appraisal District, Board of Directors, will meet in the district office, Los Creek Office Building, 258 South Main, Jacksboro, on June 15, 1982, at 6:30 p.m. Information may be obtained from Doris G. Ray, 258 South Main, Jacksboro, Texas 76056, (817) 567-6301.

The Lower Colorado River Authority, Ad Hoc Committee for Selection of Bond Underwriters, will meet at 3700 Lake Austin Boulevard, Austin, on June 16, 1982, at 9 a.m. Information may be obtained from Elof H. Soderberg, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.

The Wood County Appraisal District, Board of Directors, will meet in the conference room, 217 North Main, Quitman, on June 17, 1982, at 1:30 p.m. Information may be obtained from W. Carson Wages, P.O. Box 951, Quitman, Texas 75783, (214) 763-4946.

TRD-824796

In Addition

The *Register* is required by statute to publish applications to purchase control of state banks (filed by the banking commissioner); notices of rate ceilings (filed by the consumer credit commissioner); changes in interest rate and applications to install remote service units (filed by Texas Savings and Loan commissioner); and consultant proposal requests and awards (filed by state agencies, regional councils of government, and the Texas State Library and Archives Commission).

In order to aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows. This often includes applications for construction permits (filed by the Texas Air Control Board); applications for amendment, declaratory ruling, and notices of intent (filed by the Texas Health Facilities Commission); applications for waste disposal permits (filed by the Texas Water Commission); and notices of public hearing.

Comptroller of Public Accounts

Comptroller's Decision 12,110 (Sales Tax)

For copies of the following opinion selected and summarized by the administrative law judges, contact the Administrative Law Judges, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with confidentiality statutes.

Summary of Decision: A commercial photographer's transfer of negatives or prints to his customer is a sale under Texas Taxation General Annotated, Article 20.01 (K)(1)(a). All costs and expenses incurred in the production of the photograph must be added to arrive at the sales price of the photograph. See Texas Taxation General Annotated, Articles 20.01(L)(1)(b) and 20.01(L)(2)(a).

Issued in Austin, Texas on June 4, 1982.

TRD-824747 Bob Bullock
Comptroller of Public Accounts

Filed: June 8, 1982, 9:17 a.m.
For further information, please call (512) 475-1938.

Consultant Proposal Request

Pursuant to Texas Civil Statutes, Article 6252-11c, the Office of the Comptroller of Public Accounts of the State of Texas requests proposals to provide the following data processing consultant and computer support services.

Description. This request is for programming services to construct and implement programs for two separate optical character recognition systems.

Specifications. Detailed specifications are contained in the original proposal, a copy of which may be obtained after June 14, 1982, from the Revenue Processing Division of the Comptroller of Public Accounts, LBJ Building, Room 501, between the hours of 8 a.m. and 5 p.m., Monday through Friday. A presentation of information con-

cerning the proposal will be held for interested parties in the LBJ Building, Room 501, at 1:30 p.m., on June 24, 1982.

The selected consultant will be requested to produce and implement programs and documentation meeting the specifications set out in the proposal. All program products and documentation will be subject to review by comptroller project control personnel and may include program walk-through and quality assurance review. The basic tasks that the consultant will perform include:

- (1) producing application programs in accordance with the proposal;
- (2) documenting the applications programs in accordance with the proposal;
- (3) installing applications programs on comptroller's scan optics systems; and
- (4) providing system and terminal operator procedures and instructions in accordance with the proposal.

Construction and implementation of the Taxpayer Change Request Program will begin on the date of the contract award and will continue through September 24, 1982. The Void DLN and/or Date Entry Remittance Exception Program will be constructed and implemented from September 25, 1982, through November 19, 1982.

Interested parties must exhibit qualifications for successfully completing the requirements of the proposal and must include resumes of personnel who will be performing under this contract.

Selected Criteria. The comptroller's office will consider, in addition to the reasonableness of the proposed fee, the demonstrated competence, knowledge, and qualifications of each individual who will work on the project, and of the firm as a whole. When other considerations are equal, the consultant whose principal place of business is within the State of Texas will be given preference.

Final selection will be made by the comptroller of public accounts based upon staff recommendation. The comptroller reserves the right to reject any or all proposals. No oral proposals will be accepted.

Deadline for Proposals. Written proposals are to be submitted by 3 p.m., July 23, 1982, to Albert Wallace, Director of Revenue Processing, Comptroller of Public Accounts, LBJ Building, Room 501, Austin, Texas 78774, (512) 475-1949. Interested parties may call Mr. Wallace for further information.

Issued in Austin, Texas, on June 7, 1982.

TRD-824730 Bob Bullock
Comptroller of Public Accounts

Filed: June 7, 1982, 2:44 p.m.
For further information, please call (512) 475-6953.

Texas Department of Health Correction of Error

An adoption submitted by the Department of Health contained an error as published and an error as submitted. At 7 TexReg 2069, §621.23(a) should read: "(a) Client eligibility. A developmentally delayed child shall be eligible for ECI services if the child is under three years of age or ineligible for comprehensive special education program for handicapped children under Texas Education Code, §16.104." At 7 TexReg 2071, subparagraph (H) of §621.24(e)(2) was omitted. It should read: "(H) Indirect costs."

Texas Health Facilities Commission Application Accepted for Amendment, Declaratory Ruling, and Notice of Intent

Notice is hereby given by the Texas Health Facilities Commission of an application accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of

intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research project; and NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to the above-stated application, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice. If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P.O. Box 15023, Austin, Texas 78761, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to the application must meet the criteria set out in 25 TAC §515.9. Failure of a party to supply the necessary information in the correct form may result in a defective request to become a party.

Craig-Edwards, Belton
AN82-0604-003

DR—Request for a declaratory ruling that neither a certificate of need nor a notice of intent to acquire an existing health care facility was required for A. B. Craig and J. P. Edwards and their children, doing business as Craig-Edwards to acquire Crestview Manor Nursing Home, Inc., a liquidated corporation the stockholders of which were also A. B. Craig and J. P. Edwards and their children. The nursing home is an existing facility located in Belton. The acquisition occurred on May 24, 1982.

Issued in Austin, Texas, on June 9, 1982.

TRD-824772 John L. Darrouzet
Assistant General Counsel
Texas Health Facilities
Commission

Filed: June 9, 1982, 9:14 a.m.
For further information, please call (512) 475-6940.

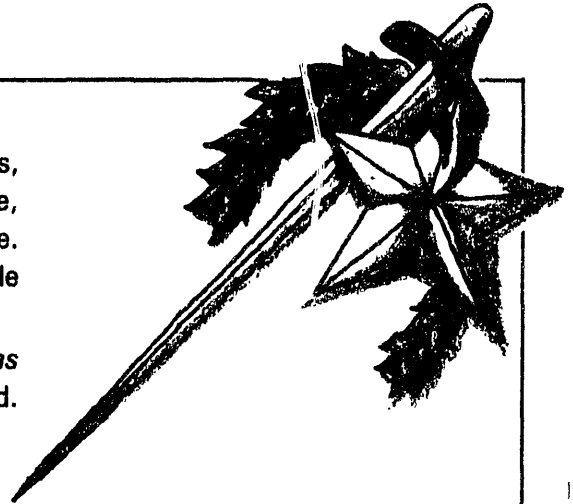
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