

-TXD S 500.6 R 263

Texas Register



Highlights

- ★ The Texas Water Development Board adopts on an emergency basis new rules concerning the use of funds from the Water Loan Assistance Fund to be used for research and flood control planning projects; effective date - November 30.....page 4238
- ★ The Comptroller of Public Accounts adopts on an emergency basis amendments to a rule concerning sales tax on computer software; effective date - November 29..... page 4241
- ★ Also published in this issue is the Texas Register Guide to Agency Activity and TAC Titles Affected in November.....page 4280

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 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Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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* 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. 8, February 1982

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Emergency Rules

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

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 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 355. Water Loan Assistance Fund

Water Conservation, Water Quality, and Water Development Planning and Research and Flood Control Planning Fund

31 TAC §§355.101-355.108

The Texas Water Development Board adopts on an emergency basis §§355.101-355.108, concerning the use of funds from the water loan assistance fund to be used for research and flood control planning projects. These rules are promulgated pursuant to the Texas Water Code, Chapter 15, Subchapter F. The Texas Water Code, Chapter 15, was passed by the 67th Legislature, first called session, effective November 10, 1981. The board finds that an urgent need exists to provide funds for research and flood control planning because of the difficulty in financing these types of projects, especially in light of developing cuts in the federal budget for these types of projects.

§355.101. *Criteria for Funding.*

(a) On the basis of the language of the Texas Water Code, Subchapter F, and expressed concerns of water policy makers, water conservation, water quality, and water development planning and research contracts shall be awarded on the basis of the following general fund criteria:

(1) that planning and research projects have specific application to the water conservation, water quality, and water development needs of Texas;

(2) that planning and research projects bring water conservation, water quality and development objectives closer to application, and implementation and that the research and planning show promise for significant contribution within the next 15 years, with preference for planning and research projects demonstrating current or near term economic feasibility;

(3) that the planning and research projects have the potential of drawing federal, private, or local participation, or of leading to subsequent support by such sources, so long as the matching requirements by cooperating funding agencies do not modify the basic direction of the research and planning mission as specified by the Texas Department of Water Resources;

(4) that the planning and research projects neither be repetitive of nor substitute for existing funding; and

(5) that the research projects fall within the scope of research, development, and demonstration related to water supplies, water quality, and water conservation technologies.

(b) On the basis of the language of Texas Water Code, §15.405, and expressed concerns of water policy makers, flood control planning contracts shall be awarded on the basis of the following general funding criteria:

(1) that the applicant demonstrates a need for funds for flood control planning and that there is no other source of funds;

(2) that any flood control planning project application be such that, as far as practicable, the entire needs of a watershed are considered as opposed to a piecemeal consideration of a flooding problem;

(3) that the results of any flood control planning project show promise for significant contribution within the next 15 years, with preference for flood control planning projects demonstrating current or near current economic feasibility;

(4) that the projects for which flood control planning is undertaking have the potential of drawing federal,

private, or local participation, or of leading to subsequent support by such sources, so long as the matching requirements by cooperating funding agencies do not modify the basic direction of the planning mission as specified by the Texas Department of Water Resources,

(5) that the flood control planning projects neither be repetitive of nor substitute for existing flood control planning; and

(6) that the flood control planning projects fall within the scope of research and planning related to supplemental water supplies and water conservation technologies, insofar as possible.

(c) In addition to these general criteria, funding of specific research projects will be contingent upon meeting the standards set forth with regard to §355.103 of this title (relating to Request for and Submission of Proposals) and §355.104 of this title (relating to Evaluation and Selection of Proposals)

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

(a) Procedure. The selection of research and planning proposals is based on consideration of the following:

(1) the kinds of problems being encountered in Texas to which water conservation, water quality, and development and flood control planning would apply;

(2) the levels of funding necessary to obtain significant results,

(3) the potential for stimulating participation by other agencies, organizations, or individuals; and

(4) applications received from political subdivisions of the state for planning assistance for water projects.

(b) Priorities. Priorities will be established by assessment of water conservation, water quality, water planning, and flood protection needs of Texas through cooperation among personnel of the Texas Department of Water Resources, and related state agency personnel, and by consultation with identified experts and concerned citizens in the research and planning areas of interest to the department

(c) Criteria. Projects will be selected for consideration on the basis of the following factors:

(1) significance to Texas,

(2) technical, economic, and environmental merit of proposal;

(3) economic justification of the project including present costs and anticipated cost reductions of water resources' problems being addressed; and

(4) probability of significant water conservation, water quality protection, and flood protection within five to 15 years.

§355.103. Request for Submission of Proposals.

(a) Proposal Solicitation Process. The Texas Department of Water Resources will specify the subjects and topics for which research and planning proposals are being requested. The specified list of research and planning subjects will be published in the *Texas Register* and will be distributed to state depository libraries and to those who indicate interest in receiving them. Notice of the availability of the list of research and planning subjects will be communicated by news release through the Capitol

Press and other appropriate media. Each announcement of a request for proposals for research and planning will include the following:

(1) description of project objectives;

(2) description of funding considerations;

(3) explanation of review criteria and procedures;

(4) deadline and address for proposal submission;

(5) target date for contract award;

(6) detailed guidelines for proposal contents;

(7) designation of contact person for additional information;

(8) statement of contract terms and required completion date; and

(9) statement regarding proprietary information and patents.

(b) Release of a list of research and planning subjects in no way guarantees that all or any of the funds designated will be awarded. The department retains the right to make no award in the event that no acceptable proposal is submitted in a given area.

(c) Submission of proposals. The proposal format will be designed to ensure sufficient information for evaluation, but the staff reserves the right to request further information if necessary. Voluminous proposals are neither necessary nor desired due to staff and budgetary limitations. Five to 10 double-spaced typed pages, excluding appendices, should ordinarily be adequate. Unless otherwise indicated with regard to a specific solicitation, 10 copies of the full proposal must be delivered to the executive director's office on or before the submission deadline for the proposal to receive consideration under a given announcement. Proposals should contain the following information:

(1) Project classification;

(A) Project title and number as listed in the specific request for proposal, or

(B) Category title, if not addressing a specific identified project, in which case the proposal should include a statement of how the project meets the fund criteria stated in §355.101 of this title (relating to Criteria for Funding).

(2) Discussion of how the proposer intends to fulfill the requirements of the project, including an identification of the potentials for or plans to incorporate and use proprietary information and any subcontracts planned;

(3) Availability of matching funds and services indicating amount and sources;

(4) Resumes of principals and subcontractors (including names, addresses, and phone numbers) and a summary of pertinent experience of proposing organization;

(5) Site(s) of proposed project;

(6) Time schedule for work to be performed by principals and subcontractors;

(7) Itemized budget, including fringe benefit costs, profit margin, and indication of availability of matching funds;

(8) List of products (reports, plans, or other products) the department will receive, and completion dates;

(9) Suggested monitoring procedures;

(10) Other information as indicated by specific project descriptions.

(d) Eligible proposers. In order to assure equitable distribution of the funds and to avoid conflict of interest, the following criteria are established for acceptability of proposers.

(1) Texas-based proposers will be given priority consideration, and only in unusual circumstances will this priority be disregarded;

(2) Research projects to be conducted in Texas will be given priority consideration, and only in unusual circumstances will this priority be disregarded (flood control planning proposals will be considered only for areas within Texas);

(3) Individual members of the Texas Water Development Board, department staff members, or their immediate families are not eligible; and

(4) Members of the pool of technical experts are eligible to submit research proposals in which case their participation in the evaluation process will be appropriately limited.

(e) Unsolicited proposals. Any proposal which is not responsive to a specific solicitation as described in §355.103 of this title (relating to Solicitation and Submission of Proposals) is an unsolicited proposal provided it satisfies the general requirements of §355.103(b) of this title (relating to Solicitation and Submission of Proposals). Unsolicited proposals will receive appropriate consideration within time and funding limitations in accordance with §355.104 of this title (relating to Evaluation and Selection of Proposals). Procedures for awarding contracts to private consultants will comply with Texas Civil Statutes, Article 6252-11c, Title 110A, concerning use of private consultants by state agencies.

(f) Preproposals. Funding inquiries which describe potential water conservation, water quality and planning projects but which do not satisfy the requirements for proposal submission will be considered preproposals which may become the basis of subsequent proposal solicitation or request for submission of a complete proposal.

§355.104. Evaluation and Selection of Proposals.

(a) Upon receipt, proposals will be referred to the department staff member responsible for the specific problem area in which the proposal is submitted. The responsible department staff member will review each proposal and will forward the proposals to an impartial group of technical experts (as described in §355.104(b) of this title (relating to Evaluation and Selection of Proposals)) for evaluation.

(b) An advisory committee(s) of technical experts will be appointed by the executive director to assist in the review and evaluation of research and planning proposals. Advisory committee members will be selected so as to minimize conflicts of interest while maintaining the highest available level of expertise in the proposal area. Advisory committee members will be required to indicate potential conflicts of interest so that evaluations can be weighed accordingly. For protection of proprietary information, evaluators will sign statements of confidentiality.

(c) In addition to providing specific comments, each of the evaluators will rate the proposals in the following categories, where appropriate:

(1) degree to which the proposal is responsive to the overall purpose and funding criteria and/or the specific purpose of an individual solicitation;

(2) qualifications of project staff;

(3) reasonableness of proposed budget and time schedule;

(4) availability of matching funds or services, if any;

(5) program organization and management including project monitoring procedures;

(6) adequacy of proposed technical scope of work;

(7) directly related project and staff experience; and

(8) other information as may be required for a specific project.

(d) Each responsible department staff member will prepare for the executive director a summary of all proposals submitted in his project area, a summary of the evaluations, and identification of potential conflicts of interest.

(e) On the basis of this information and his/her own investigation, the executive director shall make recommendations to the board of those proposals that meet requirements for funding. Upon approval of the board, the executive director will be authorized to enter into contract arrangements with the proposing party.

§355.105. Project Reporting Requirements. A contract technical monitor will be designated from among the department staff for each contract. This person will be responsible for monitoring the progress of the contract to assure that the Texas Department of Water Resources is receiving satisfactory performance of contract terms. Contract progress reports will be submitted by the contractor at scheduled intervals during the contract period. The requirements and dates for each progress report will be identified. The contractor will be required to submit a draft final written report for review and evaluation on or before the termination date of the contract. The department will review the draft final report within 30 days, and the contractor will have 30 days to respond to department comments and submit a final report. When agreement is reached as to final report form and content the contractor will be required to submit a camera-ready original and 25 copies of the final report which shall then be the basis for final payment authorization.

§355.106. Disbursement of Contracted Funds and Project Cost Accounting.

(a) Two vehicles for contracting will be used for contracts. An "interagency contract" governed by the State Purchasing and General Services Commission will be used for contracting with state agencies and state universities. For local political subdivisions and for private contractors, a "professional services" contract between the contractor and the department will be drawn. In both instances, contracts entered into shall contain terms and conditions considered appropriate to protect the interests of the state and those of the contractor.

(b) State of Texas contractors will be paid on an actual cost reimbursement basis provided for by State Purchasing and General Services Commission rules and regulations. Private contractors will be paid on a fixed contract amount basis in most cases; however, consideration will be given to special circumstances requiring some other basis of compensation. Unless otherwise provided, payment for services rendered shall be upon completion of predetermined phases of the project and after certification by the contract monitor. In instances in which more frequent payments are requested due to the nature of the work performed or the condition of the contractor, a case-by-case review will be made and appropriate accommodations provided when possible. State of Texas entities shall be reimbursed, based upon their actual costs incurred, upon submission and approval of proper invoices and supporting documentation. Other contractors shall be paid on the basis provided in the contract upon submission of proper vouchers. In each case, 10% of the contract amount shall be retained for final payment until after receipt and acceptance of all required reports and documentation.

(c) Contractors shall maintain satisfactory financial accounts, books, papers, documents, and records, and shall make same available for examination and audit by the staff of the Texas Department of Water Resources and other authorized representatives of the state. Such materials shall be retained by the contractor for three years following final payment and termination of the contract. Accounting by contractors shall be in a manner consistent with generally accepted accounting procedures.

(d) All capital equipment purchased with contract funds becomes property of the state, either the department, or the contractor if the contractor is a state university or agency.

(e) All computer programs and/or models that are developed are to be installed on the department's computer for use by department staff and others, as appropriate.

(f) Indirect costs to universities and state agencies will be negotiated on a case-by-case basis.

§355.107. Dissemination of Results.

(a) Results of all projects completed under contract with the agency will be submitted in the form of a written report or other printed material (including data, charts, computer programs, maps, or drawings) which will then become public information. Contractors will be available for brief presentations of results as required by the department. When the final result includes a demonstration, specific hardware, or a proprietary process, provisions will be made on a case-by-case basis. In general, it is expected that the results of research and planning projects funded by this program will be made accessible for public use as appropriate. Specific provisions will be made in each contract to cover this contingency initially, as well as to establish eventual ownership at the conclusion of a period of monitoring and/or accessibility.

(b) In the event that federal, private, university, or other state agency funding is also used for completion of a project, public availability of results, patent application authority, and terms for monitoring, inspection, and

ownership will be negotiated with all the parties involved, in accordance with applicable federal and state regulations.

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

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

Person—Any individual, partnership, corporation, institution of higher education, or political subdivision of the State of Texas for purposes of this subchapter of the board rules concerning research.

Conservation and Development—Will include maintenance and enhancement of the quality of the waters of the State of Texas for purposes of this subchapter of the board rules concerning research.

Flood Control Planning—Developing mechanisms to provide the most cost effective flood protection by means of structural and nonstructural measures to abate flood hazards.

Issued in Austin, Texas, on November 30, 1982.

TRD-829027

M. Reginald Arnold II
General Counsel
Texas Department of Water
Resources

Effective date: November 30, 1982

Expiration date: March 29, 1983

For further information, please call (512) 475-7845.

**TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public
Accounts
Chapter 3. Tax Administration
Subchapter O. Sales Tax Division—State
Taxes**

34 TAC §3.308

The Comptroller of Public Accounts adopts on an emergency basis amendments to §3.308, concerning computers—hardware, software, services, and sales. When the rule was amended in February 1981, exempting software from sales tax, the comptroller failed to delete a reference to programming services in another subsection of the rule. This has caused confusion among both sellers and purchasers of software and programming services. Also, it was not made clear

from the amendment that software included home computer game cartridges played with the use of home computers and television sets. Many sellers of computer game cartridges have continued to collect sales tax on the sales price of the game cartridges. Since the Christmas season is drawing near, the comptroller feels it is in the public interest to get this information in the rule, in adopted form, as soon as possible.

This emergency amendment is adopted under the authority of Texas Tax Code § 111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the sales tax.

§3.308. Computers—Hardware, Software, Services, and Sales.

(a) Hardware.

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

(3) Separately stated charges for labor or services rendered in installing, applying, remodeling, or repairing computer hardware are not taxable. [Charges for other services, such as programming or training are not subject to tax if the services are optional to the customer and the charges are separately stated.]

(4) (No change.)

(5) A resale certificate may be issued by a purchaser only if the hardware is purchased for the exclusive purpose of resale. If the purchaser makes a taxable use of the hardware while holding it for resale, the purchaser is liable for sales [use] tax. See §3.285 of this title (relating to Sales for Resale; Resale Certificates) [and §3.346 of this title (relating to Use Tax)].

(6) (No change.)

(b) Software. The sale, lease, or rental of computer programs or programming services is the sale of an intangible and, therefore, is not subject to sales or use tax. **Software includes computer game cartridges which allow certain games to be played on a television set through interaction with a computer or on home computers. When hardware and software are purchased together, sales tax is not due on a charge for computer game cartridges if separately stated from the charges for hardware.** [unless a mandatory part of the sale, lease, or rental of hardware.]

(c)-(d) (No change.)

Issued in Austin, Texas, on November 29, 1982.

TRD-828996

Bob Bullock

Comptroller of Public Accounts

Effective date: November 29, 1982

Expiration date: March 28, 1982

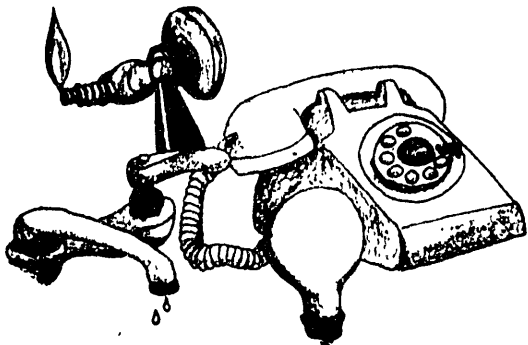
For further information, please call (512) 475-3825

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



John E. Cunningham, public utilities director, 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. Cunningham 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 avoid confusion, since the revisions in §23.23 will make the definitions unnecessary. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and to make decisions with respect to administering the provisions of the Public Utility Regulatory Act or the rules of the commission.

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

[Fuel adjustment factor—A computed number which, when multiplied by the number of kilowatt-hours

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

General

16 TAC §23.3

The Public Utility Commission of Texas proposes amendments to §23.3, concerning definitions. The definitions of fuel adjustment factor and fuel cost factor will be deleted to agree with §23.23 of this title (relating to Rate Structure).

consumed by a customer during a billing period, will produce a fuel adjustment charge to the customer. The total of these charges to all customers is the difference in the cost of fuel experienced by the utility during the calendar month that most closely corresponds to the billing period and the cost of fuel that would have been experienced if the price of fuel had been equal to that price stated in the tariff of the utility. The cost of fuel may include the cost of economy energy, hydroelectric energy, and energy purchased from a qualifying facility, and the fuel cost component of purchased power. In addition, on an interim basis until the final order in the utility's next rate case, the cost of fuel may include capacity or demand-related costs for power purchased from a qualifying facility, as defined in substantive Rule 052.02.05.058(a)(1). During the utility's next rate case, interim capacity or demand-related cost components shall be removed, if appropriate, and included in the utility's base rates.

[Fuel cost factor—A computed number which, when multiplied by the number of kilowatt-hours consumed by a customer during a billing period, will produce a fuel cost charge to the customer. The total of these charges to all customers is the cost of the fuel consumed in generating energy by the utility during the calendar month that most closely corresponds to the billing period. The cost of fuel may include the cost of economy energy, hydroelectric energy, energy purchased from a qualifying facility, and the fuel cost component of purchased power. In addition, on an interim basis until the final order in the utility's next rate case, the cost of fuel may include capacity or demand-related costs for power purchased from a qualifying facility, as defined in substantive Rule 052.02.05.058(a)(1). During the utility's next rate case, interim capacity or demand-related cost components shall be removed, if appropriate, and included in the utility's base rates.]

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 November 29, 1982.

TRD-829011 Rhonda Colbert Ryan
Acting Secretary
Public Utility Commission of
Texas

Earliest possible date of adoption:
January 7, 1982

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

Records and Reports

16 TAC §23.11

The Public Utility Commission of Texas proposes amendments to §23.11, concerning general reports. The request for information regarding a fuel cost factor calculation for a given billing period will be deleted to agree with changes in §23.23 of this title (relating to rate structure), which will eliminate automatic fuel adjustment.

John E. Cunningham, public utilities director, 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. Cunningham 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 avoid confusion, since the revisions in §23.23 will make the requirements unnecessary. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450 N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power, and to make decisions with respect to administering the provisions of the Public Utility Regulatory Act or the rules of the commission.

§23.11. General Reports.

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

(e) Fuel Cost and Use Information. Copies of all presently effective and future fuel purchase or sale contracts or both shall be available for examination or filed with the commission on request. [Information, including estimates and calculations, involved in calculating a fuel cost factor for a given billing period, shall be filed with the commission by the fifth day of the billing period by all electric utilities including municipally owned electric utilities.] In addition, each generating electric utility, including municipally owned generating electric utilities, shall file a monthly fuel report on a form prescribed by the commission.

(f)-(p) (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 November 29, 1982.

TRD-829012 Rhonda Colbert Ryan
Acting Secretary
Public Utility Commission of
Texas

Earliest possible date of adoption:
January 7, 1983

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

Rates

16 TAC §23.23

The Public Utility Commission of Texas proposes amendments to §23.23, concerning rate structure. The proposed changes will eliminate the automatic

fuel adjustment and require formal commission approval of the fuel component in the charge for electricity through a quarterly filing by each generating electric utility.

John E. Cunningham, public utilities director, has determined that for the first five-year period the rule will be in effect there will be fiscal implications as a result of enforcing or administering the rule. The effect on state government will be an estimated additional cost of \$1 million per year for the years 1983-1987. There is no anticipated effect on local government.

Mr. Cunningham 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 closer scrutiny and prior approval of fuel charges through this proposal will create a requirement for more efficient fuel purchases by utilities.

The anticipated economic cost to individuals who are required to comply with the rule as proposed will be as follows. Delays in collecting revenues to cover fuel costs may cause some increase in the working-capital requirement of electric utilities required to comply with this rule. There will also be variable costs for increased administrative and legal needs. At present, however, no dollar values can be assigned.

Comments on the proposal may be submitted to Carolyn E. Shellman, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and to make decisions with respect to administering the provisions of the Public Utility Regulatory Act or the rules of the commission.

§23.23. Rate Structure.

(a) (No change.)

(b) Rate design.

(1) (No change.)

(2) **Effective April 1, 1983, no automatic [An]** adjustment for recovering the cost of fuel used in the generation of electric power may be allowed in the tariff of electric utilities. Generating electric utilities shall be subject to the following requirements and procedures.

(A) Within 25 days following the close of each calendar quarter, information required to calculate the fuel component of its electric rates for the succeeding quarter shall be filed by the utility on forms prescribed by the commission. The first such filing shall be on or before January 25, 1983. The fuel component shall be approved quarterly by the commission.

(B) Each quarterly filing shall set forth the estimated fuel costs to be incurred and the amount of the over or underrecovery, if any, and shall set forth specifically and in detail the basis upon which the utility contends that such costs should be allowed in base rates. The first filing under this rule shall also include any over or

underrecovery remaining by virtue of termination of the utility's fuel adjustment charge. The filing shall also include any additional data required by the commission and shall be supported by testimony and an affidavit executed by an officer or designated representative of the utility attesting:

(i) that the factual matters set forth in the filing are true and correct and that the estimates set forth therein reflect the utility's best estimates and are made in good faith; and

(ii) that the estimated fuel costs are reasonable. The burden of proof shall be upon the utility to establish that the new fuel costs are reasonable and adjustments for any previous over or underrecovery are correct.

(C) All motions to intervene shall be filed within 10 days from the date of the filing. If any such motions for intervention are filed, the commission or hearings examiner shall hold a hearing at 9 a.m. on the fifth working day following this 10-day period at the commission's offices located at 7800 Shoal Creek Boulevard, Suite 450N, Austin, to determine whether an intervention will be granted or denied and to classify or consolidate the intervenors for hearing purposes and to hear any other motion concerning such proceeding. All protests shall be filed within 30 days from the date of the filing and must set forth the grounds of the protest clearly and specifically.

(D) The commission shall act upon each quarterly filing within 45 days from receipt thereof by final, appealable written order establishing such fuel components as it determines are reasonable and in compliance with these rules. Such finding of reasonableness shall not be binding on the commission or any party in subsequent rate cases or proceedings relating to fuel costs and shall not relieve the utility of its burden of proving in subsequent rate cases and proceedings that the amounts so charged and collected are reasonable.

(E) Nothing in this subsection shall be construed to allow an electric utility to change the energy component of the cost per kilowatt-hour charge which was established in the utility's tariffs in the most recently approved general rate case, nor to deny to a utility the right to recover all fuel costs actually incurred by them, to the extent that same are found by the commission to be reasonable, or to permit a utility to recover more than those actual fuel costs which are found reasonable by the commission.

(F) In the event an electric utility experiences fuel curtailments, equipment failure, strikes, embargos, sanctions, or other unforeseen circumstances which would substantially change its estimated operating conditions and fuel costs, such utility shall have the right, at any time, in the event of a substantial increase in fuel costs, to submit an emergency request for commission approval. Any such request shall state why the utility is requesting a change in the fuel component already filed under the quarterly procedure as set out in subparagraphs (A)-(E) of this paragraph and the magnitude of change in fuel costs that this occurrence will cause. In the event of a substantial decrease in fuel costs, the utility shall file a similar emergency request for commission approval.

(G) The quarterly fuel component shall be calculated as follows:

$$(i) C = \left(\frac{F \pm A}{S} - BR \right) \times LCF$$

(ii) C = Fuel component in cost per kilowatt-hour.

(iii) F = Estimated cost of fuel for the calendar quarter. This cost may also include the fuel portion of the cost of purchased power, economy energy, energy purchased from a qualifying facility, hydroelectric energy, and other costs associated with generation or purchased power as may be ordered by the commission. Improper costs are subject to exclusion by the commission.

(iv) A = The difference between the actual fuel cost subject to recovery and actual revenue collected from the fuel charge during the second preceding calendar quarter.

(v) S = Estimated kilowatt-hour sales for the calendar quarter.

(vi) BR = Portion of the fuel component included in the base rate as determined in the utility's last rate case.

(vii) LCF = The fuel component may be adjusted according to the customer's service voltage or the utility's loss correction factors if such an adjustment has been previously been approved by the commission in a general rate proceeding.

(H) The method and procedures for determining the fuel component as set forth herein shall be contained in the utility's tariff. [when approved by the commission provided that:

[(A) At the time of a rate hearing, the utility shall have filed with the commission all requested fuel contracts and cost data upon which such total fuel costs are predicated with a schedule showing any adjustments anticipated under current contracts;

[(B) The total cost of fuel per kilowatt-hour (fuel cost factor) and/or purchased power (purchased power adjustment factor) is shown on the bill (provided that the utility shall have the option of also showing on the bill the total cost of fuel);

[(C) The items included in the cost of fuel are approved by the commission;

[(D) Fuel costs billed shall be for fuel consumed in the generation of electric energy in the calendar month that most closely corresponds to the billing period; and

[(E) The total fuel cost is applied equitably to each customer's bill and is proportional to the number of kilowatt-hours used. This shall be done by determining a fuel cost factor.

(3) Items included in the cost of fuel, will be reviewed on a regular basis by the commission, and improper charges shall be disallowed. If such charges are disallowed, the utility shall provide appropriate refunds to affected customers as directed by order of the commission.

(4) Each electric utility shall maintain a monthly record of the cost of fuel used in the generation of electricity which is included or will be included in customer rates. Such record shall show at each month end the total

cost (actual or estimate) of fuel consumed for that month and on a cumulative basis, and the total dollar amount of revenues resulting from the fuel cost component in customer rates. Any difference between the total cost of fuel consumed and the amount of revenues resulting from the fuel cost component in customer rates shall be credited or charged to the customers in the next billing month.

[(5) An adjustment for recovering the cost of economy energy purchased pursuant to a sale between different electric utilities may, at the commission's discretion, be allowed in the tariff of the purchasing utility.

[(6) If the fuel cost revenues exceed the fuel cost by 10% in any given month and the total fuel cost revenues have exceeded total fuel costs by the total 5.0% or more for the most recent 12-month period, the utility shall so advise the commission

[(7) A 10% penalty shall be applied to excessive collections above the actual fuel costs for any given month. For any month in which a utility over-recovers actual fuel costs by 10% or more and has over-recovered by 5.0% or more for the 12-month period ending with such month, such overcollections shall be deemed to be excessive unless otherwise found by order of the commission.

[(8) No penalties for excessive collections shall be applied to those electric utilities which have been granted a fuel adjustment clause which explicitly considers changes in the efficiency of generation. In addition, utilities applying such an efficiency-based fuel adjustment clause shall be exempt from calculating adjustments for over and under-collection in the manner set forth in paragraph (4) of this subsection.]

(3) Nongenerating electric utilities purchasing all of their power and energy requirements from other electric utilities under rates set by this commission and/or the Federal Energy Regulatory Commission shall be allowed to recover the total cost of such power and energy when approved by the commission provided that:

(A) each utility shall file no later than February 1, 1983:

(i) the amount of purchased power cost per kilowatt-hour sold that is recovered in the utility's base rates currently approved by the commission; and

(ii) an adjustment to be included in the utility's tariff for recovering any difference between the actual cost of purchased power and the purchased power cost included in the base rates.

(B) each nongenerating electric utility shall maintain a monthly record of the cost of purchased power which is included or will be included in customer rates. Such record shall show at each month end the total cost (actual or estimate) of power purchased for that month and on a cumulative basis, and the total dollar amount of revenues resulting from the purchased power cost components in customer rates. Any difference between the total cost of purchased power and the amount of revenues resulting from the purchased power cost components in customer rates shall be credited or charged to the customers in the next billing month.

(C) If the purchased power cost revenues exceed the purchased power cost by 10% in any given month and the total purchased power cost revenues have ex-

ceeded total purchased power costs by the total of 5.0% or more for the most recent 12-month period, the utility shall so advise the commission.

(D) A 10% penalty shall be applied to excessive collections above the actual purchased power costs for any given month. For any month in which a utility over-recovers actual purchased power costs by 10% or more and has over-recovered by 5.0% or more for the 12-month period ending with such month, such over-collections shall be deemed to be excessive unless otherwise found by order of the commission.

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 November 29, 1982.

TRD-829013 Rhonda Colbert Ryan
Secretary
Public Utility Commission of
Texas

Earliest possible date of adoption:
January 7, 1983

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

Service

16 TAC §23.36

The Public Utility Commission of Texas proposes amendments to §23.36, concerning billing. The change in the rule is necessary because of revisions in §23.23 of this title (relating to Rate Structures). The rule will no longer require separate listing of the fuel cost factor or purchased power adjustment factor, and individual costs for service items will not be listed separately on the bill; however, applicable surcharges or taxes may be shown.

John E. Cunningham, public utilities director, 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. Cunningham 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 avoid confusion. The revisions in §23.23 demand minor revisions in this rule. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Carolyn E. Shellman, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450 N, Austin, Texas 78757.

The amendments are proposed under Texas Civil Statutes, Article 1446c, §16, which provides the

Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its power and to make decisions with respect to administering the provisions of the Public Utility Regulatory Act or the rules of the commission.

§23.36. Billing.

(a) Rendering and form of bills.

(1) (No change.)

(2) Electrical utilities.

(A) (No change.)

(B) The customer's bill shall show all the following information:

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

[(iv)] The total service charge if billed separately from fuel costs;

[(v)] The total cost of fuel per kilowatt-hour (fuel cost factor) and/or purchased power (Purchased power adjustment factor), if authorized, provided that the utility shall have the option of also showing on the bill the total cost of fuel.]

[(iv)][(vi)] The total amount due for electricity used. **Individual cost of service items shall not be listed separately on the bill; however, applicable surcharges or taxes may be shown.**

[(v)][(vii)] The date by which the customer must pay the bill in order to avoid penalty;

[(vi)][(viii)] The total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period.

[(vii)][(ix)] A distinct marking to identify an estimated bill;

[(viii)][(x)] Any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill; and

[(ix)][(xi)] The information required in items (ii), (iii), (iv), [(v), (vi)] and [(viii)] [(x)] of this subparagraph shall be arranged so as to allow the customer to readily compute his bill with the applicable rate schedule which shall be mailed on request to the customer.

(C) (No change.)

(3) (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 November 29, 1982.

TRD-829014 Rhonda Colbert Ryan
Acting Secretary
Public Utility Commission of
Texas

Earliest possible date of adoption:
January 7, 1983

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

TITLE 19. EDUCATION
Part I. Coordinating Board, Texas
College and University System
Chapter 25. Administrative Council
Subchapter B. Administration of the
Texas State College and University
Employees Uniform Insurance Benefits
Program

19 TAC §25.34

The Administrative Council of the Coordinating Board, Texas College and University System, proposes amendments to §25.34, concerning basic procedural and administrative practices.

James McWhorter, executive secretary to the administrative council, 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. McWhorter 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 tenured faculty members or faculty and staff members on an academic year contract through the summer months, but not working through the summer, will be eligible for the state's contribution toward their insurance premiums. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to James McWhorter, Executive Secretary, Administrative Council, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The amendments are proposed under Texas Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules consistent with the provisions of the Texas State College and University Employees Uniform Insurance Benefits Act to carry out its statutory responsibilities.

§25.34. Basic Procedural and Administrative Practices.

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

(g) Employees shall be eligible to continue insurance coverage during an approved leave of absence under the following conditions: If the leave is with pay, no change in the payment of coverage shall be made. **However, any individual in a leave without pay status for one month or more in which no paycheck is received, is not entitled to the state appropriation toward his or her insurance premiums. [If the leave is without pay, the] The individual shall be allowed to continue coverage, providing satisfactory arrangements are made in advance for payments of existing coverage, i.e., lump sum or periodic payment to the institution at the institution's billing cost. Tenured faculty members or faculty and staff members not teaching or working during the summer months are exempted from this prohibition if they are employed**

under an academic year contract that extends through the summer months.

(h)-(l) (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 November 24, 1982.

TRD-828997

James McWhorter
Executive Secretary
Administrative Council
Coordinating Board, Texas
College and University System

Proposed date of adoption:

January 20, 1983

For further information, please call (512) 475-2033.

TITLE 40. SOCIAL SERVICES AND
ASSISTANCE
Part I. Texas Department of
Human Resources

Chapter 15. Medicaid Eligibility

The Department of Human Resources proposes amendments to §§15.3223, 15.3302, and 15.3309, concerning medicaid eligibility to comply with changes in Supplemental Security Income policy. Section 15.3223 is amended to specify that an applicant or recipient must be given an opportunity to disprove ownership of any or all funds in a joint bank account to which the applicant or recipient has unrestricted access. Section 15.3302 is amended to clarify the treatment of interest payments and deposits to joint bank accounts to which an applicant or recipient has unrestricted access. Section 15.3309 is amended to clarify that interest income may be excluded if it meets the definition of irregular or infrequent income.

David Hawes, director, Programs Budget and Statistics, has determined that for the first five-year period the amendments will be in effect there will be fiscal implications as a result of enforcing or administering the rules. The estimated additional cost to the state is: \$33,030 in fiscal year 1983; \$36,140 in fiscal year 1984; \$38,090 in fiscal year 1985; \$42,228 in fiscal year 1986; and \$44,973 in fiscal year 1987. There is no fiscal implication to local government.

Mr. Hawes has also determined that for each year of the first five years the amendments are in effect the public benefit will be that a few individuals may be eligible for Medicaid who would have been ineligible under previous policy. There is no economic cost to individuals required to comply with the rules.

Written comments are invited and may be sent to Susan L. Johnson, Administrator, Policy Development Support Division—370, Department of Human Resources 153-B, P. O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

Subchapter GG. Resources for Individuals Related to the SSI Program

40 TAC §15.3223

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

§15.3223. *Special Resource Consideration.* There are certain types of resources which create questions about countability. This rule explains resources which are non-excludable, but need clarification. [A list of resources and a clarification of the policy follow:]

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

(4) Joint bank accounts.

(A) If an applicant/recipient has a joint bank account and can legally withdraw funds from the account, the department considers all of the funds in the account a resource of the applicant or recipient. If two or more recipients have a joint account with unrestricted access, the department considers that each recipient owns an equal share of the funds.

(B) If the caseworker determines the applicant/recipient ineligible because of the amount of funds in a joint account, the caseworker must offer the applicant/recipient an opportunity to disprove the presumed ownership of all or a part of the funds. The caseworker may also give the applicant/recipient an opportunity to disprove ownership of joint accounts that do not currently affect eligibility but may in the future.

(C) To disprove full or partial ownership, the applicant/recipient must provide the following documentation to the caseworker:

(i) a written statement by the applicant/recipient about the ownership of the funds, the reason(s) for establishing the joint account, and who made deposits to and withdrawals from the account;

(ii) a written statement from the other account holder(s) which verifies the applicant/recipient's statement. If either the applicant/recipient or the co-holder(s) is mentally incompetent or a minor, the caseworker obtains the statement from a knowledgeable third party; and

(iii) evidence of a change in the account designation either to remove the applicant/recipient's name from the account, to restrict the applicant/recipient's access to the funds, or to establish separate accounts.

(D) The caseworker sends the applicant/recipient a letter specifying the documentation needed and the date by which the applicant/recipient is expected to provide the documentation. The caseworker allows the applicant/recipient 15 to 30 days to provide the documentation.

(E) If the applicant/recipient provides documentation to disprove the presumed ownership, the

caseworker determines the applicant/recipient's share of the funds based on the documentation. If an applicant/recipient disproves the ownership of funds, the caseworker also does not consider the funds' countable resources for prior periods of eligibility.

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 December 1, 1982.

TRD-829046

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption:

January 7, 1983

For further information, please call (512) 441-3355, ext. 2037.

Subchapter HH. Income for Individuals Related to the SSI Program

40 TAC §15.3302, §15.3309

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

§15.3302. *General Principles Concerning Income.*

(a) The department has established the following general principles for considering income [are as follows in this section].

(b) The caseworker considers any cash received from the sale of a resource as a resource, [is] not as [considered] income [, but is considered a resource].

(c) The caseworker does not consider as income a premium payment for supplementary medical insurance benefits under Title XVIII (Medicare) which is paid by a third party [is not considered income].

(d) The caseworker does not consider as income [The term income does not include] the value of any third-party payment for medical care or medical services furnished to an individual. Income does not include [; nor does it include] the value of advice, consultation, training, or other services of a strictly social nature furnished to an individual [by any governmental or private agency].

(e) Because gross wages before taxes are considered [Since income taxes are included] as income when determining the amount of an individual's wages or unearned income, the caseworker does not consider a refund of income [such] taxes to the [an] individual [is not considered] as income.

(f) The caseworker considers any lump sum payment as [is considered] income for the month in which it is received, and as a resource for the following months.

(g) If an aged [, blind,] or disabled individual has dependents who are receiving either SSI or AFDC, the caseworker does not consider any income of [accruing to] these individuals [is not considered] in determining the eligibility of the aged [, blind,] or disabled individual. This income has [will have] already been considered in determining the dependents' need for SSI or AFDC.

(h) If an eligible individual has unrestricted access to a joint bank account, the caseworker determines the amount of income to consider from interest payments on the account or deposits by co-holders to the account as follows.

(1) If the co-holders of the account are not eligible for AFDC, SSI, or MAO, or are not a spouse or parent whose income is deemed to the eligible individual, the caseworker considers all interest payments and deposits made by the ineligible co-holders as income of the eligible individual.

(2) If one or more co-holders is eligible for AFDC, SSI, or MAO, or is a spouse or parent whose income is deemed to the eligible individual, the caseworker does not consider a deposit by the co-holder, spouse, or parent as income to the eligible individual. The caseworker equally divides interest payments and deposits by the other co-holders among the eligible individuals and/or spouse or parent.

(3) If an eligible individual has disproved ownership of all or a part of the funds in a joint account, the caseworker does not consider as income any deposits by the co-holders before the change in the account designation. The caseworker considers interest payments as income to the eligible individual in proportion to the amount of the funds owned by the eligible individual.

(4) For this policy, the term "spouse" includes a spouse whose income is considered in the applied income determination process, either to divert income for the spouse's needs or to obtain a contribution from the spouse.

§15.3309. *Rents, Dividends, Interest, Royalties.*

(a) Under the SSI eligibility requirements, rents, dividends, interest, and royalties which are not income from self-employment are [considered] unearned income.

(b) Rents are [represent] compensation in cash or in kind for the use of real or personal property [(e.g., land, an apartment, a room, machinery)]. To determine [In determining] the amount of rent to be counted as unearned income, the caseworker deducts only ordinary and necessary out-of-pocket expenses [incurred] in operating and maintaining the property [are to be deducted from gross rent]. These expenses include only expenses necessary for the production or collection of income. The caseworker does not consider [Under no circumstances is] depreciation or depletion of the property [considered] as [such] an expense.

(c) Dividends and interest normally are returns [represent a return] on [a] capital investments [investment], usually on stocks, bonds, or savings accounts [, etc]. Dividends can also accrue on [participating] life insurance policies. The caseworker considers these dividends [are considered] unearned income when [at the time] they become available to the individual, although [whether or not] they may not [are] actually be received. Most [participating] life insurance policies provide that these dividends may be paid to the policyholder in cash and may be withdrawn at any time. The caseworker must consider [Therefore,] these dividends [must be treated] as unearned income in the month of [“]receipt,[“]regardless of] whether they are withdrawn, used for the purpose of reducing premium amounts, used for purchasing addi-

tional coverage, or left with the company to accumulate at a specified rate of interest. The caseworker may exclude policy dividends [may be excluded] if they meet the test of infrequent or irregular income.

(d) The caseworker also must count interest income [must also be counted] as unearned income in the month of [“]receipt,[“]regardless of] whether the interest is withdrawn or allowed to remain in the account. The month of receipt is the month in which the bank or savings institution posts interest [is posted] to the individual's account. The caseworker may [It is permissible to] use statements from a bank or savings institution as evidence of posting, whether the [such] statements are received monthly, quarterly, semiannually, or annually. The caseworker may exclude interest income [may be excluded] if it meets the definition of irregular or infrequent income [as infrequent income if statements are received quarterly or less frequently, and interest reported for the period is \$60 or less].

(e) Royalties or [are] payments to the holder of a patent or copyright, the owner of a mine, oil well, etc., for the use of a product, are income.

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 December 1, 1982.

TRD-829059

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption:
January 7, 1983

For further information, please call (512) 441-3355,
ext. 2037.

Chapter 79. Legal Services

Subchapter M. Appeals Process

40 TAC §§79.1206-79.1208, 79.1210-79.1214,

The Texas Department of Human Resources (DHR) proposes amendments to §§79.1206-79.1208, and §§79.1210-79.1214, concerning the appeals process and fair hearing procedures. The amendments are proposed to incorporate procedural changes and clarifications in the department's fair hearings policies. The amendments are also proposed to ensure that DHR legal services rules are consistent with the policies in the Fair Hearings, Fraud, and Civil Rights Handbook.

David Hawes, director of programs budget and statistics, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Hawes has also determined that for each year of the first five years the amendments as proposed are

in effect the public benefit will be a better understanding of the fair hearing process through clarification of ambiguous procedures. There is no economic cost to individuals required to comply with the amendments.

Written comments may be sent to Susan L. Johnson, Administrator, Policy Development Support Division—342, Department of Human Resources 153-B, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

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

§79.1206. Hearing Officer.

(a) Selection. Any program director, supervisor (other than the supervisor responsible for supervising the worker who made the decision), or other person designated by the commissioner **may** [will] act as the hearing officer in a [the respective] region, **unless he** [except in those instances where he or she] is disqualified [or unable to act].

(b) Disqualification. A hearing officer is [will be] disqualified if **he** [he or she] directly participated in the case decision being appealed. [(1)] Criteria for **deciding** [determining] disqualification **because of** [due to] direct participation in a decision **includes** [would include]:

[(A)](1) **participation** [Participating] in a case conference with either the worker, contract manager, or the supervisor to **discuss the situation and** [in which the entire case situation (or major points at issue) was discussed and evaluated in an effort] to assist the worker (or supervisor) to **make** [in making] a decision [regarding assistance in a particular case];

[(B)](2) **review of** [Reviewing] either the entire record or a [comprehensive memorandum] summary of the record for the same purpose;

[(C)](3) [Any] personal interest [on the part] of the hearing officer in the outcome of the appeal decision;

[(D)](4) **justified allegations by the appellant about the hearing officer's fairness** [When an appellant makes a specific request that a certain hearing officer not hold the fair hearing, or if the appellant makes allegations against the fairness of the hearing officer]; or

[(E)](5) **supervision of** [When the hearing officer has supervised] the worker or contract manager even though **he** [he or she] may not have been involved in the decision. [(2)] The hearing officer need not be disqualified merely on the grounds that he or she has answered a question about the interpretation of agency policy in connection with the case, provided the question and answer on policy interpretation was stated in broad terms of departmental action.]

(c) Alternate hearing officer. **If the hearing officer believes that there may be grounds to disqualify him from holding the hearing, or if the question of his impartiality has been raised, he writes a memorandum outlining the facts of the situation to the regional attorney. The regional attorney decides if the hearing officer should be disqualified and, if necessary, informs the regional administrator so that he may designate a new hearing officer.** [If the hearing officer is disqualified to hold the

hearing, then the regional administrator should designate an alternate hearing officer from among the supervisors in the region (excluding the supervisor of the unit in which the appeal originates). The hearing proceedings will be held in abeyance pending recommendation by the regional administrator. If an alternate hearing officer is designated, the hearing officer will immediately transmit to the alternate hearing officer all papers in his possession pertaining to the appeal.]

(d) **Hearing officers' powers and duties.** The hearing officer [will]:

(1) **administers** [administer] oaths or affirmations;

(2) **ensures** [ensure] that all relevant issues are considered;

(3) **requests, receives, and makes** [request, receive, and make] part of the record all evidence [determined] necessary to decide the issues being raised;

(4) **regulates** [regulate] the conduct and course of the hearing **following** [consistent with] due process to ensure an orderly hearing;

(5) **orders, if** [order where] relevant and useful, an independent medical assessment or professional evaluation from a source [mutually] satisfactory to the **appellant** [household] and the department;

(6) **makes** [render] a hearing decision **for** [in the name of] the department, according to [in accordance with] the provisions of this subchapter. **The decision is** [which will be] the final administrative decision in the hearing; **and**

(7) **does not have the authority to reverse a decision based on departmental policy that is alleged to be contrary to law or unconstitutional, except upon the recommendation of Legal Division.**

§79.1207. Notice Requirement—Proposed Termination or Reduction of Assistance.

(a) The department must give the **client** [recipient] timely and/or adequate notice **as appropriate** in cases of any proposed action to terminate or reduce total assistance or [social] services [as appropriate]; or to make or continue a protective, vendor, or two-party payment; or to continue a protective payment in AFDC mismanagement cases. [The notice requirement] For food stamp cases, **the department notifies clients** [must be handled] in accordance with **Chapter 9, Subchapter FFF of this title** [Rules 326.15.65.001-.005], **(relating to Notice of Adverse Action).**

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

(3) Adequate notice is [to be] given for:

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

(C) Termination of the grant when a **client** [recipient] attains the maximum **eligibility age**, such as an AFDC child reaching 18 years of age or 21 years of age if attending school]; or

(D) (No change.)

(b) Assistance or services may be withheld without the timely 10-day advance notice, but the department must send adequate notice not later than the date of action, if:

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

(4) The **client** [recipient] has been placed in

skilled nursing care, [or] intermediate care, or long-term hospitalization;

(5)-(8) (No change.)

(9) **The client fails to submit a correctly completed status report.**

§79.1208. Food Stamp Client Participation in [Prior to and Pending] Fair Hearings.

(a) **Food stamp clients** [Households] requesting a fair hearing during the 10-day advance notice period [will] continue to receive the same benefits [participate on the basis authorized immediately prior to the notice of adverse action] unless the certification period has expired, or the client [household] specifically waives this service.

(b) If the client [household] establishes that his [its] failure to request a hearing and continuation of benefits during the 10-day advance notice period was for good cause, benefits are [will be] reinstated [on the prior basis]. If benefits are reduced or terminated because of an across-the-board [as a result of a mass] change, they are [benefits will be] reinstated upon request of the client [household] only if the issue being appealed is improper determination of eligibility or level of benefits or that federal law or regulation was misapplied or misinterpreted.

(c) If a client [household] requests a hearing and continuation of benefits because his [as a result of a normal expiration of the] certification period ended, benefits are [will] not [be] reinstated or continued.

(d) If [When] food stamp benefits are [have been] continued during an appeal and the department's action is upheld by the hearing decision, the worker establishes a claim against the client [household shall be established by the worker in accordance with Food Stamp Program rules] for [all] overissuances according to Food Stamp Program rules.

(e) If [Once] benefits are continued or reinstated during the appeal period, they cannot be reduced or terminated before [prior to receipt of] the official hearing decision except in the following circumstances[.]:

(1) If the certification period expires, the client [household] may reapply and, if eligible, be certified at the appropriate benefit level.

(2) If during the appeal hearing, the [a DHR] hearing officer decides [determines] that the only issue being appealed is one of federal law or regulation, and that the client's [household's] claim of improper computation or misapplied law is invalid, the hearing officer must direct that the client's benefits [household's basis of issuance] be reduced or denied [terminated].

(3) If another change adversely affecting the client [household] occurs while the hearing decision is pending and the client [household] does not appeal the adjustment for the later [subsequent] change, benefits are [will be] reduced only as shown on the later [proposed in the subsequent] notice of benefit denial or reduction form. [Finally, if a mass change affecting the household's eligibility or basis of issuance occurs while the hearing decision is pending, the benefits are adjusted accordingly.]

§79.1210. Hearing Request—Time.

(a) **The department restricts the right to appeal to the client, his legal guardian, or authorized representative. In cases in which assistance or service is provided by a**

third party vendor, the vendor may not appeal because of what he may consider an adverse action against the client.

(b)[(a) Generally,] The appellant has a right to file an appeal within **90 days** [a reasonable time (60 days),] from the effective date of the decision. [However, 90 days is deemed a reasonable time in which to appeal either the food stamp or AFDC decision.]

(c)[(b)] If [When] more time elapses [than 90 days have elapsed] between the effective date of action and the date the client asks for an appeal [of indicated dissatisfaction with the action], the worker offers [will offer] to process a re-application or to review the case situation. [If this is acceptable to the appellant, the worker will take the indicated action. At any time within a certification period,] A food stamp client [household] may request a fair hearing to **question his** [dispute its] current level of benefits **at any time within a certification period.**

(d)[(c)] The [local] worker [(MAU director,)] or the hearing officer may [amend or] change the decision at any time before or during the hearing process. The appellant, **however**, [still] has the right to proceed with the hearing [even] after an adjustment is made.

(e)[(d)] If the client is [Should the applicant or recipient be] satisfied with the last action but still dissatisfied with the **previous** [preceding] action, **he** [he or she] may appeal the first decision, or if dissatisfied with both decisions, **appeal both** [may be appealed].

§79.1211. Petition for Fair Hearing

(a) **If the client requests an** [When the applicant or recipient clearly expresses a desire to] appeal in writing or orally to a department representative, [appropriate] staff [will] complete a petition for fair hearing and send it to the hearing officer.

(b) The petition is the **official** [formalized] record of the request for an appeal. The **petition includes** [request should provide] specific information about the basis for and the date of the client's dissatisfaction.

(c) If the client [applicant or recipient] later states that an **earlier** [a prior] letter, which was treated as routine correspondence by **DHR staff**, was intended as a request for an appeal, [appropriate] staff [will] complete a petition, attach the original correspondence, and send it to the hearing officer. The date of the request, as defined in the department rule about the date of request for a hearing, is [will be] shown on the petition. **Staff also set up a conference with the client if he requests one.** [Any request for a conference will also be acted upon as promptly as possible.]

(d) If the appellant states that he [indicates that he or she] is represented by legal counsel or other representative, **he must complete and sign the petition for fair hearing** [the appropriate portion of the petition must be completed and signed by the appellant] before a copy of the acknowledgment and notice of fair hearing and copies of all [subsequent] forms and correspondence are [will be] mailed to the counsel or representative.

§79.1212. Notification of Hearing Officer.

(a) [The Petition for Fair Hearing will be forwarded to the hearing officer.

(b)] Immediately upon receiving notice of an ap-

peal, the worker, contract unit staff, or technician in whose job assignment the appeal occurs (or the supervisor, in the event there has been an interim vacancy) **completes the petition for fair hearing form** [will assemble] and **sends** [send from the case record] the originals or **clearly legible copies** of all necessary eligibility documents to be used by the hearing officer, except the record of Case Action and Notice of Case Action forms. The original of the turnaround form is **kept** [retained] in the **case record** [casefolder] and a copy is **sent** [routed] to the hearing officer. **A summary of the case should also be prepared.** This material must be sent to the hearing officer within five days of notice that a **client** [an applicant or recipient] wishes to appeal.

[(c) All necessary eligibility documents include the following:

(1) Computer input documents (both the record of case action and the notice of case action).

(2) Client-completed eligibility document and worker's eligibility work sheet.

(3) If the point at issue is a medical decision, include all medical forms having a bearing on the decision.

(4) If the point at issue is social services, include the request form or any other appropriate eligibility documents, or both.

(5) If the point at issue is WIN or food stamps, include the appropriate eligibility document. Include copies of food stamp computer input forms, and client-completed applications, food stamp work sheet, or self-employment form if appropriate, and any other food stamp eligibility documents which bear on the point at issue.

(6) A narrative describing any points at issue or evidence not covered by the above.]

(b)[(d)] Requests for **appeals** [an appeal] received in the state office **are** [will be] referred to the hearing officer without an acknowledgment **to the requestor.** The hearing officer **sets** [will set] up appropriate controls and **notifies** [notify the] appropriate staff of the appeal. [The appropriate] Staff [will] immediately **send to the hearing officer all** [forward all necessary] **documents necessary for** [to be introduced into] the hearing [to the hearing officer]. The hearing officer **acknowledges** [will acknowledge] receipt of a request for a fair hearing and **sets** [set] the date for the hearing.

§79.1213. *Setting the Appeal Hearing.*

(a) [No later than five days after receipt of the petition for fair hearing and any necessary eligibility documents to be used in the hearing,] The hearing officer **acknowledges the request** [will acknowledge the petition] and **sets** [set] the hearing **within five working days after receipt of the petition for fair hearing and any eligibility documents necessary for the hearing.**

(b) The hearing must be held (except in unavoidable circumstances[, such as illness, inclement weather, etc.]) **within 45** [not later than 30] days from the date of the request for a hearing.

(c) The hearing is [will be] held at a reasonable place and time. This may be [mean] the local office [in the vicinity of the residence,] or [in] the home of the appellant. The physical condition of the appellant and

availability of transportation are some of the factors which the hearing officer **considers** [should consider] in setting the place of the hearing. Qualified sign language interpreters **are** [will be made] available for deaf persons requiring them.

§79.1214. *Notice of Hearing.*

(a) The acknowledgment and notice of fair hearing **form** serves as notice of the hearing. **It** [This] is sent to the appellant to acknowledge the request for a hearing and **to suggest a** [suggesting a reasonable] time, date, and place for the hearing. **Persons unable to read are given the information orally as well as in writing.** The hearing officer **includes** [will include] with the acknowledgment a copy of the statement of appellant's rights in hearing proceedings, an envelope **with** [bearing] the hearing officer's address, and a request for another appointment **form, if** [in the event] the date, place, or time is unsatisfactory.

(b) The acknowledgment and notice of **fair** [the] hearing is [must be] mailed to the appellant **within** [no later than] five **working days** after receipt of the petition and at least 10 days before the day set for the hearing unless the appellant requests an earlier date.

(c) **For level-of-care appeals, a level of care given for a new condition or a significant change in a previous condition does not affect the appeal of the adverse action.**

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 November 29, 1982.

TRD-829004

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption:
January 7, 1983

For further information, please call (512) 441-3355,
ext. 2037.

Subchapter N. Hearing Procedure

40-TAC §§79.1301-79.1304, 79.1306-
79.1311, 79.1313, 79.1314

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

§79.1301. *Conduct of Hearing.*

(a) The **hearing officer conducts the fair hearing** [will be conducted by the hearing officer] as an informal proceeding, not as a formal court hearing. The participants **are** [will be] placed under oath, but the technical rules of evidence need not be **followed** [adhered to].

(b) The hearing is [will] not [be] open to the public, but in food stamp cases, friends and relatives of the **appellant** [household] may attend if **he** [the household] so

chooses. All persons attending the hearing must have an interest in the rights of the appellant and are [will be] given an opportunity to give information pertinent to the issues under consideration.

(c) The hearing officer has [will have] the authority to limit the number of persons in attendance at the hearing if space is limited.

(d) The hearing is recorded either by a **tape recorder** [mechanical equipment] or by a stenographer. The recording or stenographer's notes are [will be] kept on file for 90 days (three years in food stamp appeals) after the hearing. During this period, the notes or recording are [will be] available to the appellant and representative for copying or transcribing at their own expense. The hearing officer prepares [will prepare] a summary of what took place [transpired] at the hearing. This is [which will be] the official record of the appeal. **Confidentiality rules apply to this information.**

§79.1302. *Hearing Proceedings.*

(a) The appellant or the appellant's representative has [will have] the opportunity:

(1) to examine evidence to be used in the hearing before the hearing if [when] a request is made either orally or in writing to the hearing officer;

(2) to examine or request copies (at no cost) of [reexamine] all documents and records used at the hearing;

(3)-(8) (No change.)

(b) The hearing officer shares [will share] with the appellant any [and all] evidence or testimony used in the hearing. If essential to the conduct of the hearing, the worker or the hearing officer may refer to the case record for information. [However,] If the case record is used during the hearing, the appellant may ask [request an opportunity] to see it and have it placed in evidence. In the case of a food stamp appeal involving the Texas Employment Commission (TEC), the representative of TEC has [shall have] sent the hearing officer a copy of the TEC case file. **Before the hearing, the appellant may examine the case file, except for confidential information TEC determines should be protected from release, at the appropriate TEC office.** [This case file may be examined by the appellant prior to the hearing at the appropriate TEC office except for confidential information TEC determines should be protected from release. However,] Information not released to the appellant may not be used by TEC at the fair hearing or considered by the hearing officer in making a decision.

(c) (No change.)

(d) The hearing focuses [will be focused] around the point or points at issue and all facts pertinent to the appellant's situation as it existed at the time the action was taken, and particularly those facts centered around the appellant's point of dissatisfaction.

(e) The hearing officer discusses [will discuss] with the appellant the findings upon which the action of the local worker was based and explains [will explain] the applicable law and approved policies as the points at issue are discussed.

(f) The hearing officer has the responsibility for impartially assisting the appellant in presenting his [the] case effectively.

(g) In food stamp hearings, the hearing is [will] always [be] attended by a representative of the department, who may be the worker who made the decision. At the request of the appellant or his [the appellant's] representative, or whenever the hearing officer determines it necessary, the worker, technician, contract manager, or contracted [contract] agency staff who made the decision must be present at the hearing. If the worker attends [is attending] the hearing at the request of the appellant, another department representative is not required. If it becomes apparent during the hearing that the presence of the worker, technician, or contracted [contract] staff is necessary, the hearing officer may recess the hearing and call in that person. In food stamp appeals involving the Texas Employment Commission, a representative of TEC must be available for questioning over the telephone during the course of the hearing. The representative must [shall] attend the hearing if the hearing officer determines that the representative's presence is necessary or if the appellant specifically requests the representative's attendance.

(h) If the hearing officer determines that the appellant's [client's] circumstances have changed since the action being appealed was taken, the hearing officer may direct the worker to adjust the client's benefits based on the changed circumstances. In this case, benefits must be adjusted as soon as possible without awaiting the hearing officer's final decision on the appeal. If the hearing officer determines that the appellant is due restored benefits, the worker must take the action as directed by the hearing officer. If an error is discovered after the request for a hearing, the worker or hearing officer may correct the error by granting or adjusting benefits immediately. If the appellant [household] lost benefits to which he [it] was entitled [to], the worker must process retroactive payments to the appellant [household] as directed by the hearing officer. This action should not delay or modify the right of the appellant to proceed with the hearing. The appropriate change in assistance may be made while an appeal is still pending. If [the grant, food stamp, or social services] benefits should be adjusted before the hearing, the department may provide retroactive [payments or food stamp or social services] benefits back to the date the incorrect action was taken. The [Such] adjustments may be made immediately by the worker at the direction of the hearing officer. In this event the appeal would normally be withdrawn. [However,] The appellant, however, may continue with the appeal [for retroactive payments or food stamp benefits if desired]. In this case, no immediate adjustment is [will be] requested. Reimbursement for [in social] services is [will be] made if [when] payment for services was actually made by the recipient.

(i) Procedures and controls are established that [which will] ensure that prompt, definitive, and final administrative action is [will be] taken within 90 days from the date of the request for a fair hearing. Action on food stamp [and medical level of care] cases must be taken within 60 days. The appellant is [will be] notified of the decision in writing by the hearing officer [in the name of the department].

(j) The hearing officer authorizes [is responsible for authorizing] the worker to process any corrected

payments or food stamp benefits being restored to the [effective] date incorrect action was taken, or to the date action should have been taken. The hearing officer **also authorizes** [is also responsible for authorizing] the food stamp [certification] worker to credit the restored benefit entitlement to any unpaid overissuance. [In all cases] Except in food stamps, retroactive corrective payment is [will be] made only for the 12 months preceding the month in which the underpayment is discovered.

(k) **Any information considered by the hearing officer in deciding the appeal must be shared with the appellant or his authorized representative. Private (*ex parte*) consultations, whether oral or written, regarding the substantive issues of the appeal, are only allowed when their substance is shared with all parties to the appeal.**

§79.1303. *Confidential Material.*

(a) Information furnished to the department by **anyone** in confidence should not **be seen by** [come to the attention of] the appellant. [However,] Any information which is considered in reaching a decision in an appeal must be shared with the appellant. Therefore, if the original information on which the eligibility decision was made has been classified "confidential," it [this information] cannot be used in making the decision on the appeal because it cannot be shared with the appellant. For these reasons the following procedures **are** [will be] used.

(b) All examining physicians will be informed by a [means of an informational] notice [appearing] on the form authorizing the examination that the medical information they furnish is subject to examination and review by the **appellant** [applicant or recipient] or **his** [the] representative **if** [in the event of] an administrative appeal **is held**. **If** [In those cases where] the medical examiner has prior notice, it is [will] not [be] necessary to **get permission from** [clear with] the [individual] physician before the information is released to the **appellant** [applicant, recipient,] or representative.

(c) **If** [When] the [individual] examining physician **is not notified** [has not received notice] that the medical information is subject to examination and review by the **appellant** or representative (i.e., reports made **before** [prior to] the inclusion of information notice on forms) **the Medical Review Team or the Disability Determination Unit gets the** [Services Division or Nursing Home Services Division will get] clearance **of** [with] the examining physician. If the physician has no objections to the release of the information, then it is [will be] released [in accordance with the written request]. **If he** [he or she] objects to the release, the department is [will be] required to have another examination made at state expense by a different physician, **so** [in order] that the medical information may be shared with the appellant or representative.

(d) When another agency releases medical information to DHR and requests that this information be **confidential**, **the** [held in confidence, this] request is [will be] honored. This information cannot be released to the **appellant or considered in the appeal** [applicant, recipient, or his or her representative (except as allowed in the following)]. Therefore, if there is no additional information in the record upon which a decision can be made, the department **authorizes** [will be required to authorize]

additional medical examinations at state expense. [which may be used in the conduct of the appeal. The department may utilize, at all administrative levels, medical information which is supplied in confidence by other agencies, such as the Division of Disability Determination, Texas Rehabilitation Commission. This includes hearings at which the disclosure to claimants and their representatives is permissible, if the department maintains controls so that the patient's well-being and treatment is protected. Special treatment of medical information from other agencies marked "confidential" will be respected if one of the following situations is present:]

(1) The claimant has a mental or personality disorder and is apparently unaware of this condition, or is hostile or rejects the probability of such a condition.

(2) A medical report contains information which may be considered to be harmful, offensive, or embarrassing to the claimant or the reporting source.]

(e) [Where disclosure of a disturbing report must be made, attempts should be made to make such disclosure to a representative rather than to the appellant.

(f) If a private physician requests that the medical report not be shared with the appellant, **the Medical Review Team or the Disability Determination Unit notifies** [Services Division or Long Term Care Division will notify] the hearing officer. The hearing officer **then contacts** [will then contact] the appellant's representative and **gets** [obtain] an agreement to protect the confidentiality of the report and **to not** [to] share it with the appellant. The medical report is **then** [will then be] shared with the appellant's representative. **If** [In the event such] an agreement to protect [the] confidentiality cannot be **made** [obtained], the appellant does not have a representative, or the physician requests that even the representative not be allowed to review the report, a new medical examination must be **made** [procured] at state expense.

§79.1304. *Furnishing Medical Information.*

(a) **If** [When] an appellant or **his** [authorized] representative requests **medical evidence** [it in writing], the department **gives** [will furnish] the appellant or the representative a copy of all medical evidence [contained] in the files, including the medical reports, the social summaries, the medical review team's or **disability determination unit's** findings, decisions, and reassessments, subject to the following **conditions**: [regulations].

(1) The request may be oral in food stamp cases, but must be in writing in all other cases.

(2) **If** [When] an appellant requests medical records, the information is **provided** [will be furnished] to the hearing officer by the **Medical Review Team or Disability Determination Unit** [Services Division or Nursing Home Services Division] and is [to be] shared with the appellant or **authorized** representative before the hearing[, in the same manner as medical reassessments are furnished]. If, during the hearing, the appellant or authorized representative requests in writing [this] medical information, the hearing officer **recesses the hearing and gives** [will be recessed and] the information to [will be furnished] the appellant or representative [before reconvening the hearing]. The release of medical information is [will be] subject to the regulations **about** [concerning] confidential material.

(b) If [In addition, when] an appellant or the appellant's legal counsel wishes to **send** [submit] written interrogatories or **requests** [request] a pre-hearing conference to **get** [obtain] additional information from the **Medical Review Team, Disability Determination Unit, or the Texas Department of Health, the request is** [Special Medical Services Division, this request will be] granted, subject to the following conditions:

(1) Written interrogatories must be [submitted in] clear and concise [form]. **No more than 30 questions may be asked.**

(2) Four copies of the interrogatories **must** [should] be submitted to the hearing officer, who **sends them** [will forward the original] to legal division [of the State Office] with copies to **the appropriate areas** [Medical Services Division or Nursing Home Services Division, as appropriate, and the Financial Services Branch].

(3)[(2)] When the **Medical Review Team or Disability Determination Unit** [Special Medical Services Division] receives its copy of the written interrogatories, **it prepares, answers, and sends them** [will be prepared and sent] with the medical record to the Legal Division **within 10 working days**. Legal Division **reviews and sends the appellant** [will review and transmit] the official **reply** [response] to the interrogatories **after consulting the appropriate staff**. [, based upon the information supplied by the Special Medical Services Division and appropriate consultation with the medical staff. Those] Questions that [which] are relevant to the case and [which] are in proper form **are** [will be] answered. **Enough** [Sufficient] explanatory information is [may be] added to each answer [in order] to clarify the department's position in the matter.

[(3)] In a food stamp appeal involving a medical issue, a physician's statement, along with other related case material, is to be submitted to the hearing officer.]

(c) If an appellant's attorney wishes to have a pre-hearing conference **about** [concerning] the medical information, [the request should be directed to the Legal Division by] either the **hearing officer or the attorney representing the appellant sends the request to Legal Division** [or by the hearing officer]. The Legal Division **sets** [will set] up an appointment for the pre-hearing conference to be **held** [conducted] in Austin[, Texas]. The appointment is [will be] set at a time when the hearing officer can **go** [travel] to Austin to attend the conference. The department cannot pay any expenses of the appellant or the attorney(s) representing him for attending the pre-hearing conference in Austin. At the pre-hearing conference, the appellant or attorney can question the medical staff concerning medical eligibility. The hearing officer **records the** [will bring a recorder to record the complete] pre-hearing conference.

[(d)] In a food stamp appeal involving a medical issue, the physician's statement, along with other related case material are to be submitted to the hearing officer. Copies of this information may be furnished the appellant if requested in writing.]

§79.1306. Action by Hearing Officer.

(a) Postponement. In food stamp cases, the **client** [household] may request and [is entitled to] receive a **postponement of up to** [not to exceed] 30 days. The time

limit for action on the decision may be extended by as many days as the hearing is postponed. Other appeal hearings may be postponed by the hearing officer if there appears to be a reasonable cause. If possible, the appellant should file a written request for postponement of the hearing at least two days before it is scheduled to occur, unless extenuating circumstances exist. The hearing officer **then resets** [will then reset] the hearing.

(1) The hearing officer **decides if there is** [is responsible for determining whether or not] a valid reason for postponement [exists], or in a food stamp appeal, if the appellant is entitled to a postponement. [Examples of the] Reasons to be considered are requests by the appellant or **his** [the appellant's] representative for a reasonable delay to **get** [obtain] necessary documentation to prepare for the hearing or illness of the **client** [recipient] or a member of the **client's** [recipient's] immediate family. If reasonable doubt exists if [as to whether or not] the **client** [recipient] or a member of the immediate family is actually too ill to appear, [then] the hearing officer may **ask the client** [request the recipient] to furnish a statement from a physician [to this effect].

(2) If [When] a hearing officer **decides that a** [makes a determination that a postponement which has been] requested **postponement** cannot be granted, either because the appellant is not entitled to it in a food stamp appeal or because [of a finding that] there is not reasonable cause, the hearing officer must document **this decision** [the basis for his or her determination] in writing, either by letter or on the Official Record of Fair Hearing form **sent to the appellant**.

(b) Dismissal. If neither the appellant nor the appellant's representative appears for the hearing and **gives** no reason [is given for the failure to appear], the hearing officer sends a **letter** [an inquiry] to the appellant **asking if** [as to whether] the appellant wishes any further action on the request for a hearing. If **the appellant does not reply** within 10 days [after mailing of the inquiry, no reply is received], the hearing officer summarizes the [pertinent] facts and records them on the appropriate form. If the case record alone clearly **shows** [indicates] that the **worker's** [caseworker's] decision should be reversed, the hearing officer may enter a decision for the appellant. In all other cases, the hearing officer dismisses the appeal on the basis that the request for hearing has been abandoned by the appellant.

(1) If the appeal is dismissed, the hearing officer records the decision as the official action. **The hearing officer sends** a letter [will be directed] to the appellant advising of the dismissal.

(2) In 10-day appeals, [the appeal is considered abandoned] if the appellant or representative does not appear **at the scheduled hearing** and has not **notified the hearing officer that he is unable to appear, the hearing officer dismisses the appeal after following the procedures in this rule. He notifies the appellant** [requested a postponement for sufficient cause. He will notify the recipient] that the worker's recommended action will become effective. If the hearing officer notes **errors that** [error(s) which would] affect the recommended decision of the worker, the hearing officer **notifies the appellant** [will notify the recipient] and the worker so that appropriate action **is** [may be] taken to correct the error(s). The **ap-**

pellant has [recipient retains] the right to request a regular hearing without continued help [assistance] if not more than 90 days (60 days in food stamp cases) have passed since he [the recipient] was notified of the department action [which is] being appealed.

(c) Withdrawn appeal. Once an appeal is filed, only the appellant or his representative [the authorized agent] can withdraw the request. [If the appellant wishes, the petition to appeal may be withdrawn.] The request [withdrawal] must be in writing to the hearing officer of the local office and the appellant must give the reason for the withdrawal.

(1) If the appellant verbally requests the hearing officer to withdraw his appeal, but fails to confirm this request in writing, the hearing officer writes the appellant to ask for a written withdrawal. The appellant is informed that if he does not respond to this letter within 15 days, the appeal will be withdrawn based upon the original verbal request. [If the appellant fails to give a reason, it will be the responsibility of the hearing officer to make every reasonable attempt to determine the reason for the withdrawal and make the report.]

(2) [If the withdrawal request is received by the local office or the hearing officer, it is the responsibility of the hearing officer to record the reason for withdrawal.]

[(3)] If the hearing officer accepts the withdrawal, he sends [he or she will send] a letter to the appellant stating that the withdrawal is [has been] accepted. If [There may be instances in which] the hearing officer believes [considers that] the appellant was improperly induced or influenced to withdraw the request for a hearing, he directs [and in those instances the hearing officer will direct] that the appellant be given another opportunity to proceed with the hearing.

(3)[(4)] If [When] an appellant dies during the course of an appeal, the legal representative of the decedent's estate must pursue the appeal, or the hearing officer may consider the appeal [may be considered] withdrawn. [However,] A food stamp appeal cannot be considered withdrawn until a household member or representative gives [to] DHR written notice to withdraw the appeal.

(d) Recessed hearings.

(1) The hearing officer recesses the hearing if [when] the appellant requests a delay [in order] to prepare the case or for other essential reasons.

(2) If a decision cannot be made on the basis of the information, the hearing officer may recess the appeal and advise the appellant of the reason for the recess and the nature of the additional information that is required. The hearing is [will be] reconvened for a discussion of the additional information. This hearing is [will be] recorded as in the initial hearing. The recording need not be transcribed, but it should be retained for a period of 90 days (three years in food stamp cases) after the decision is made.

(3) The hearing should be recessed by the hearing officer if, during the course of the hearing, the hearing officer considers it necessary to consult a collateral source (including the worker or technician) for information or testimony [such as new medical assessment. The information will be obtained by the hearing officer personally]. The hearing is [will be] reconvened to share the

pertinent information or testimony with the appellant or to hear the testimony of the witness [in order to give the appellant an opportunity to refute it].

[(4)] When a hearing is recessed, the hearing officer initiates the request for additional information within five days after the original hearing. The hearing officer has 10 days in which to obtain the additional information, share it with the appellant, and give the appellant an opportunity to refute the additional information. The hearing officer has five days after obtaining and sharing the information in which to make the administrative decision and complete the official record form.

[(5)] In some instances where the point at issue needs documentary evidence, the physical reconvening of a hearing may not be necessary. In such an event, the hearing officer will inform the appellant during the hearing of the need for obtaining documentary evidence. When it is obtained, the hearing officer will inform the appellant of the information by letter and give the appellant the opportunity to refute it before the hearing officer can consider it and make a decision.]

§79.1307. Decisions by Hearing Officer.

(a) Requirements. The decision by the hearing officer is made for the Texas Department of Human Resources[, as the definitive] and is the final administrative action by the department in an [relation to the] appeal[, is in writing and recorded on a designated department form and filed in the appeal file]. The decision is [made in the name of the Texas Department of Human Resources and is] recorded on the official record form given [furnished] to the appellant and filed in the appeal file [within five days after the date of the hearing]. The hearing officer prepares a cover letter to inform [is prepared which informs] the appellant that the designated form is the official record of the appeal. [Although] The appellant may [is to be allowed to] examine any documentary material related to the case [during the hearing, a copy of such will not be furnished either] before, during, or after the hearing [unless a specific written request is made to the hearing officer]. The hearing officer usually makes [will normally make] the decision at the close of the hearing. He must make it within [, but not later than] five working days after [the completion of] the hearing, and immediately prepare the official record form. If the hearing officer needs additional information before [is necessary prior to] making the decision, he makes every effort to get it [then steps to obtain the additional information must be initiated] within five working days. The overall time in food stamp cases may not exceed 60 days from the date of the request to the date the appellant is notified of the decision, unless approved delays are [have been] requested by the appellant. The overall time may not exceed 90 days in all other cases.

(b) Reversed appeals. [Reverse.]

(1) The decision is reversed if [when] the hearing officer[, after careful study of all evidence presented at the hearing,] decides that the action of the local office or provider [contract] agency was not according to [in accordance with] current [statutes,] policies[,] or procedures. [In most of the reversed appeals the decision is in the appellant's favor, but occasionally the decision is

adverse to the appellant.] The action to reverse the decision is [will be] recorded on the official record form.

(2) If the point at issue was any aspect of need, amount or denial of assistance, or food stamp benefits, the decision of the hearing officer **indicates the level of benefits** [will give the indicated amount of payment, basis of food stamp issuance, or food stamp allotment] for which the appellant was eligible at the time of the decision. The hearing officer **may also instruct the worker to re-establish eligibility because of new information since the appeal was requested.** [will also give the amount for which the appellant currently is eligible. This amount will include any changes in relation to need brought out in original or reconvened hearings which have occurred subsequent to the decision appealed. If the hearing officer determines that overissuances were made at any time in food stamp cases or overpayments were made during the preceding 12 months in all other cases as a result of willful withholding or willful misrepresentation of information, recoupment is to be sought. The actual months the overpayments or overissuances were made are to be included in the decision.]

(3) [If the hearing officer determines that there has been an overissuance of food stamps, the worker will take appropriate action. Recovery can be made against the household when the hearing officer's decision reveals that there was an overissuance of food coupons during the pendency of the appeal if the household was allowed to continue participation in the program.

[(4) If the point at issue was some other statutory aspect of eligibility, such as age, transfer of property, or deprivation of parental support, the decision will be confined to that particular point.

[(5)] The letter from the hearing officer to the appellant, with the official record attached explaining the [basis for the] decision, shows that the action of the local office is reversed. The letter also **shows** [indicates] the appellant's eligibility for retroactive or supplemental assistance or [social] services (if other eligibility factors are met) **if** [when] applicable. [The hearing officer will indicate the total restored benefits which are due the household.] Months for which the appellant was eligible for retroactive assistance or benefits are [to be] shown.

(4)[(6)] If the point at issue was need, the amount of the grant or food stamps, or denial of benefits, the worker must **send** [submit] the authorization document **showing** [indicating] the new amount of assistance within 10 working days **after** [following] receipt of the letter from the hearing officer. [A Disposition of Benefits form will also be completed and submitted by the worker authorizing retroactive payments for any months directed by the hearing officer.]

(5)[(7)] Immediately after receiving a copy of the hearing officer's reversed decision and if the point at issue was a factor other than need, the worker will initiate another investigation to clear all eligibility requirements. When a decision is made on these factors, an office memorandum and a copy of the authorizing document must be forwarded to the hearing officer within 10 working days of the receipt of the decision. The **An appellant who requested and received a hearing has the right to appeal any decision of the worker on an issue other than the one involved in the original decision.**

(6)[(8)] **If the appeal involves medical issues, additional medical information may be introduced during the appeal.** [When the point at issue is a medical decision, it is possible that during an appeal hearing, new and sometimes conflicting medical information will be introduced which may indicate a reversal of a previously rendered decision. Any new medical information relating to disability submitted during an appeal should be forwarded to the Medical Services Division for an evaluation and recommendation. If a decision is reversed by the hearing officer, the Medical Services Division should be promptly notified so that they may issue a corrected medical decision form to the appropriate field staff and the hearing officer involved. When a hearing officer reverses a medical appeal he or she should, as a part of the decision to be incorporated in the official record form, recommend the length of eligibility and indicate the need for any future reports. In those instances in which an appeal is reversed against the recommendation of the Medical Services Division, the length of eligibility will be six months. At the end of that time additional medical information should be obtained and sent to Medical Services Division for review in the usual manner. Any new medical information should be submitted for a reassessment to the Medical Services Division, and a new medical decision form should be issued in reversed cases. It is the responsibility of the hearing officer to determine the length of eligibility in reversed cases.

[(9) When the point at issue is a level of nursing home care determination, additional medical information may be introduced during the appeal hearing which may alter the previous decision. Any such new information is forwarded to the Nursing Home Services Division for an evaluation and recommendation. If a decision is reversed by the hearing officer, Nursing Home Services Division is notified to take appropriate action. The level of care determination will be effective until the next continued stay review date.

[(10) Upon receipt of the memorandum from the worker indicating that the appellant meets all eligibility factors, the hearing officer, in accordance with the appeal decision, will authorize the worker to make the retroactive or supplemental payment and submit the documents to the regional data entry site for processing.]

(c) **Sustained appeals.** [Sustain.]

(1) The decision is sustained **if** [when] the hearing officer[, after a careful study of all evidence presented at the hearing,] decides that the action or inaction of the local office **complies** [was in accordance] with current statutes, policies, and procedures. The **hearing officer records** [action to sustain] the decision [will be recorded].

(2) The hearing officer **sends** [will send] a letter to the appellant stating that the action of the department is sustained and **includes** [include] a copy of the official record which explains [the basis for] the decision.

(3) If the hearing officer finds that the decision [which the appellant was appealing] was correct at the time **it was made** [of the decision], but changed circumstances have **made** [rendered] the appellant eligible for assistance (or entitled to an increase, reduction, denial of grant or food stamp or **other program** [social services] benefits), the hearing officer **sustains** [will sustain] the original decision. **He instructs the worker to determine**

eligibility based on the changed circumstances [but will render an opinion concerning the eligibility status of the appellant at the time of the hearing with respect to the point or points at issue. This opinion will be provided the appellant in the letter of decision from the hearing officer and will be binding upon the local office]. If [it is the finding of] the hearing officer **decides** that the appellant was ineligible at the time of the original decision, but is eligible at the time of the hearing, **he tells** the appellant [will be so advised] and **instructs** the worker [will be instructed] to assist the appellant in filing a reapplication or to make an adjustment **in benefits** [of the assistance]. The worker must [initiate the] contact [with] the appellant **to file** [for the purpose of filing] the reapplication or **to adjust benefits** [adjusting the assistance].

(4) **The hearing officer may sustain the decision and yet order retroactive benefits or reinstate benefits if he finds that the appellant was actually eligible at the time of the original decision, although all the information required to establish eligibility may not have been available to the worker through no fault of the appellant. This decision does not imply that the worker was at fault, or that there was any other department error, and is made because of the limited communication skills and educational level of many appellants. The hearing officer may not order benefits if an appellant has refused to provide or has been negligent in providing information.**

(5)(4) If the point at issue is [was] any aspect of need or the amount or denial of **benefits** [assistance], the decision of the hearing officer **states** the [will give the indicated] amount of grant, services, or basis of food stamp issuance for which the appellant was eligible at the time of decision. [The hearing officer will also state the amount for which the appellant currently is eligible, including any changes in relation to need brought out in original or reconvened hearings which have occurred subsequent to the decision which the appellant appealed.

(5) If the appellant's ineligibility or eligibility for a lesser grant occurred during the previous 12 months and as a result of the appellant's willful failure to provide correct and complete information, the overpayments will be subject to recoupment. The appellant may also appeal the recoupment decision and the right to appeal is to be explained.

(6) If the recoupment decision is sustained, the worker will change the beginning effective date of recoupment, extending the time frame in which recoupment can be collected. This will allow the department the full 12 months authorized under recoupment policy to recover the overpayments. If the hearing officer determines that the total amount of the overpayments was more or less than the worker's decision, the beginning date of recoupment and the total amount of overpayments are changed. The hearing officer also is to include in his or her decision the actual months the overpayments were made.

(7) If, during the course of an appeal hearing on another point the hearing officer determines that overpayments were made to the appellant as a result of the appellant's willful failure to provide complete and correct information, the worker is directed to seek recoupment. The hearing officer's decision on recoupment is the final administrative action.

(8) When the hearing officer advises the food

stamp certification office of an overissuance and the months this existed, the worker will take appropriate action.

(9) A control will be maintained by the hearing officer so that reapplications or adjustments in the amount of grant or allotment are processed as soon as possible and in no event later than 10 working days from receipt of the hearing officer's letter by the worker.]

(6)((10) If [In the event] the decision of [in] the local office is sustained with no recommendation for adjustment [due to no change in circumstances], the situation is **not reconsidered** [may not be re-entered] until [such time as] the appellant alleges a change in circumstances; there has been a change in the conditions of eligibility; the worker has reliable evidence to **show** [indicate there has been] a change in the applicant's or recipient's circumstances which affects eligibility; or a review or recertification is [normally comes] due for the case [in accordance with departmental procedures].

(d) **Reopened appeals.** [Reopen.] An appeal hearing may be reopened and a decision reconsidered by the hearing officer, within a reasonable time, if there is new evidence which **shows that the hearing officer did not make a valid decision** [indicates that a valid determination or decision was not made]. The hearing officer **considers new information** [will take into consideration any communication] from the appellant or representative **and decides** [presenting new evidence and will determine] whether to reopen the appeal, request additional information, authorize a re-application, or dismiss the **information** [communication] as presenting no new evidence. **If** [When] requested, the hearing officer **makes an appointment with** [will give] the appellant or **his** representative [an opportunity to appear in person before the hearing officer].

§79.1308. *Official Record.*

(a) The hearing officer completes a designated department form, which is the official record of the hearing. This form is [serves as] a summary of [factual] information **received** [obtained] by the hearing officer **while** [in the process of] preparing for and conducting the appeal hearing. **Besides** [In addition to] supplying factual identifying and statistical data, the **hearing officer uses the form** [serves as a medium for the hearing officer] to briefly and concisely state the **issues** [points at issue]. The hearing officer's evaluation is [will be] based [exclusively] on the evidence submitted, which includes testimony, exhibits, and any other material the appellant wants to introduce.

(b) [The official record form, together with all papers and requests filed in the proceedings, and the evaluation of the hearing officer, will constitute the exclusive record for this decision. In no instance will information that has not been shared with the appellant be included in this evaluative section. The hearing officer will also record on the form the official decision and the policy or law upon which such decision was made. This report will be available to the appellant at a place accessible to the appellant or representative at any reasonable time. The hearing officer is authorized to make a verbatim transcript at his or her discretion if it is deemed necessary.]

((c)) A [photostat] copy of all documentary material used during the hearing is [will be] retained in the hearing officer's official file and is [be made] available, upon request, to the appellant or representative(s) after the decision is made. The original documentary material is returned to the worker or **contracted** [contract] agency.

§79.1309. *Public Access to Decisions.*

(a) All decisions by the hearing officer **are**[will be] accessible to appellants, their representatives, and the public (subject to provisions relating to safeguarding [assistance] information).

(b) So that it may be made accessible to the public, the body of the hearing officer's decision **contains** [will contain] no information which identifies any appellant or other participant in the hearing, community, or geographic location by name or description. The hearing officer's decision **states** [will state] the applicable law and/or policy (by section number with appropriate references or quotations), point(s) at issue, summary of the hearing, evaluation, and decision of the hearing officer.

§79.1310. *Transcripts.*

(a) Transcripts **are** [will be] prepared only at the request of the state office., for possible use in a suit, or when the local staff wants one, such as for staff training. When such] **If** a request is made, the hearing officer **supplies** [will supply] the transcript.

(b) A transcript is **not** [will not be] prepared at the appellant's request.

(c) There **are** [will be] instances **when** [where] substantial controversy or litigation appears likely. Tapes of **these** [such] appeals **are** [should be] maintained for one year in case there is need for a transcription. Even in these instances, however, transcripts **are** [will be] prepared at the request of the state or local office and not at the request of appellants or their representatives.

§79.1311. *Retroactive Payments or Restored Benefits.*

(a) **If** [When] the hearing officer finds that the decision [which was] appealed was erroneous, the hearing officer [will], under the following conditions, **authorize** [authorize] the worker to process retroactive or supplemental assistance or services [to the appellant in order] to make the appropriate adjustments in the case.

(b) **The appellant is also eligible for retroactive assistance for the time between the date of the adverse action and the hearing officer's decision if benefits were not continued during that period.** [If eligible for any retroactive assistance or reimbursement for social services, the appellant is also eligible for additional retroactive assistance for months elapsing between the date of the filing of the appeal and the final action of the hearing officer and the initiation of the appellant's assistance or adjustment in assistance if benefits were not continued during this period.] **Reimbursement or retroactive benefits are limited to 12 months preceding the month the error or underpayment is discovered. The hearing officer must specify the months of entitlement [must be specified by the hearing officer].** Department rules about food stamp restoration of lost benefits contain the procedures for authorizing retroactive benefits in that program.

§79.1313. *Procedure for Restored Payments, Benefits, or Services.*

(a) **If** [When] the hearing officer reverses a [financial assistance] decision, **he directs the worker** [the local office is directed] to authorize any **restored payments, benefits, or services, according to the hearing officer's decision** [adjustment needed in the payments].

(b) **If a decision involving services is reversed, usually the service is provided from the time of the decision instead of retroactively; however, if the client had to spend money or has unpaid bills for services erroneously reduced or denied, then he or the provider is entitled to the retroactive reimbursement of money.** [When a food stamp hearing decision requires action by the worker, the certification office responsible for the food stamp appellant's case record advises the hearing officer by memorandum of the receipt and compliance with the decision.]

(c) **If a decision involving Title XIX medical assistance is reversed, retroactive reimbursement may only be made to the Title XIX provider, not to the client. This is true even if the client has already spent his own money to purchase assistance.**

(d) **If the hearing officer sustains the worker's decision to deny or reduce benefits in 10-day appeals, the amount of assistance or benefits extended to or on behalf of an appellant during the appeal period that exceeds the amount due the appellant is recovered.**

§79.1314. *Controls and Time Limits on Appeals.*

(a) Appeals **are** [must be] processed promptly. **In making a** [The] decision on the appeal, **staff must** [will] not take more than 90 days (60 days for food stamps [and medical level of care appeals]) from the date of request for **an** appeal to date of notification of decision, except under certain circumstances **covered in these rules** [, such as when the hearing has been postponed at the request of the appellant in accordance with §79.1306 of this title (relating to Action by Hearing Officer).] **In these** [such] cases the time lapse caused by the delay is [will be] added to the 90 or 60 days **allowed** [day maximum] for processing the appeal.

(b) **A request for a hearing is considered abandoned only if the appellant or representative does not appear at the time and place agreed upon for the hearing, and if within 10 days after the hearing officer mails an inquiry, the hearing officer receives no reply. In 10-day appeals, the appeal is considered abandoned if the appellant or representative does not appear and does not request a postponement for sufficient cause.**

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 November 29, 1982.

TRD-829028 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Earliest possible date of adoption:
January 7, 1983

For further information, please call (512) 441-3355, ext. 2037.

Chapter 85. General Licensing
Procedures

Subchapter EE. Agency and Institutional
Licensing Procedures

40 TAC §85.3043

The Texas Department of Human Resources proposes an amendment to §85.3043, concerning general licensing procedures rules. The amended rule is intended to clarify the type of facility which operates primarily for educational purposes and is not subject to child-care regulation.

Clifton Martin, assistant commissioner for licensing, has determined that for each year of the first five years the rule as proposed is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Martin has also determined the public benefit anticipated as a result of enforcing or administering the rule is a clear definition of educational facilities which are not subject to child-care regulation. There is no anticipated economic cost to individuals who are required to comply with the rule.

Written comments may be sent to Susan L. Johnson, Administrator, Policy Development Support Division-294, Department of Human Resources, 153-B, P. O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the authority of the Human Resources Code, Title 2, Chapters 22 and 42, which authorize the department to administer general licensing procedures.

§85.3043. *Facilities Not Subject to Regulation.* If it is unclear that a facility is subject to regulation under the Human Resources Code, §42.041, the administrator or

governing body must submit [make] a written statement to the licensing representative, citing the subsection of the statute under which the facility is not subject to regulation and include documentation to support the facility's position. **To qualify as an educational facility not subject to regulation, the facility must meet all of the following criteria.**

(1) **The facility is accredited by the Texas Education Agency or by the Southern Association of Colleges and Schools.**

(2) **The students live with relatives, managing conservators, or in facilities not associated with the educational facility during regularly scheduled holidays or vacations.**

(3) **Relatives or managing conservators of the students retain primary responsibility for financial support, health problems, or serious personal problems.**

(4) **The provision of residential care is solely for the purpose of facilitating the student's participation in the educational program and does not exist apart from the educational aspect of the facility.**

(5) **The students live at the facility by choice and not solely because they have no other home or may not live at home.**

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 November 30, 1982.

TRD-829029

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Proposed date of adoption:
February 4, 1983

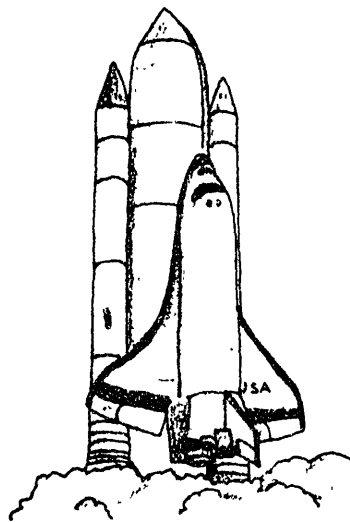
For further information, please call (512) 441-3355,
ext. 2037.

Withdrawn Rules

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

If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office. 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 of an identical or similar rule following normal rulemaking procedures.



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 341. Consolidated Permits General Provisions

31 TAC §341.123

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), the proposed new §341.123, submitted by the Texas Water Development Board, has been automatically withdrawn, effective November 30, 1982. The amendments as proposed appeared in the May 28, 1982, issue of the *Texas Register* (7 TexReg 2056).

TRD-829015
Filed: November 30, 1982

Adopted Rules

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

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.

TITLE 19. EDUCATION Part I. Coordinating Board, Texas College and University System Chapter 25. Administrative Council Subchapter B. Administration of the Texas State College and University Employees Uniform Insurance Benefits Program

19 TAC §25.34.

The Administrative Council of the Coordinating Board, Texas College and University System, adopts amendments to §25.34, without changes to the proposed text published in the October 15, 1982, issue of the *Texas Register* (7 TexReg 3684).

The justification for the rule is to require information to be included in institutions' insurance coverage booklets provided by their insurance carriers (subsection (f)) and to clarify insurance coverage for retirees who have been employed at two or more institutions (subsection (l)). The rule will provide a better understanding of coordination of benefits and how to appropriately file claims in this regard. Institutions will now have a guideline for determining in which institutional insurance program a retired employee is eligible to participate.

No comments were received regarding adoption of these amendments.

The Texas Insurance Code, Article 3.50-3, provides the Administrative Council with the authority to adopt

rules consistent with the provisions of the Texas State College and University Employees Uniform Insurance Benefits Act to carry out its statutory responsibilities.

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

Issued in Austin, Texas, on November 24, 1982.

TRD-828998

James McWhorter
Executive Secretary
Administrative Council
Coordinating Board, Texas
College and University System

Effective date: December 20, 1982

Proposal publication date: October 15, 1982

For further information, please call (512) 475-2033.

19 TAC §25.38

The Administrative Council of the Coordinating Board, Texas College and University System, adopts amendments to §25.38, without changes to the proposed text published in the October 15, 1982, issue of the *Texas Register* (7 TexReg 3685).

The justification for the rule is to require institutions to advertise their intent to solicit bids for their employee group insurance programs. This will ensure that approved insurance carriers will be fully informed of an institution's intent to solicit bids on its employee group insurance programs, with the effect that more competitive bids will be received by institutions.

No comments were received regarding adoption of these amendments.

These amendments are adopted under the Texas Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules consistent with the provisions of the State College and University Employees Uniform Insurance Act to carry out its statutory responsibilities.

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

Issued in Austin, Texas, on November 24, 1982.

TRD-828999 James McWhorter
Executive Secretary
Coordinating Board, Texas
College and University
System

Effective date: December 20, 1982
Proposal publication date: October 15, 1982
For further information, please call (512) 475-2033.



19 TAC §25.46

The Administrative Council of the Coordinating Board, Texas College and University System, adopts amendments to §25.46, without changes to the proposed text published in the October 15, 1982, issue of the *Texas Register* (7 TexReg 3685).

The justification for the rule is to authorize institutions' use of special reserves held by insurance carriers. The rule will require institutions to receive Administrative Council approval of any use of reserves other than those outlined in the statutes and will protect employee group insurance reserves.

No comments were received regarding adoption of these amendments.

The amendments are adopted under The Texas Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules consistent with the provisions of the Texas State College and University Employees Uniform Insurance Benefits Act to carry out its statutory responsibilities.

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

Issued in Austin, Texas, on November 24, 1982.

TRD-829000 James McWhorter
Executive Secretary
Administrative Council
Coordinating Board, Texas
College and University System

Effective date: December 20, 1982
Proposal publication date: October 15, 1982
For further information, please call (512) 475-2033.

**TITLE 40. SOCIAL SERVICES
AND ASSISTANCE**

**Part I. Texas Department of
Human Resources**

Chapter 9. Food Stamps

The Texas Department of Human Resources adopts the 1980 amendments to the Food Stamp Act of 1977. These rules and amendments are adopted because of regulations issued by the United States Department of Agriculture, effective July 1, 1982. Included in the rules and amendments are requirements that the department report illegal aliens to the Immigration and Naturalization Service, prorate income of ineligible aliens and count their resources, and disallow depreciation as a business expense for self-employed households. Other changes include requirements for maintaining copies of federal regulations and state operating procedures, handling of income of non-household members, client reporting requirements, resources, and entitlements of treatment center residents.

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements to be effective July 1, 1982.

Subchapter L. Responsibilities

40 TAC §9.1112

§9.1112. *Availability.* Federal regulations, state plans of operation, federal procedures contained in FNS notices

and policy memos, and the Food Stamp Handbook and supplemental instructions issued for use in certifying households are maintained in the state office for examination by the public during normal office hours. In addition, a Food Stamp Handbook must be made available for examination in each certification office upon request of applicants/recipients or their representatives.

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 December 1, 1982.

TRD-829047 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355,
ext. 2037.

Subchapter V. Household Concept

40 TAC §9.2128

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements to be effective July 1, 1982.

§9.2128. Household Determination. An applicant must complete an application on behalf of a household.

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

(4) The following persons cannot be household members and are ineligible for food stamps:

(A) (No change.)

(B) Institutional residents who receive more than half of three meals each day from an institution that is not authorized to accept food stamps. Neither residents of federally subsidized housing for the elderly built under the Housing Act of 1959, §202, or the National Housing Act, §236, nor persons described in paragraph (1)(C), (D), and (E) of this section are institutional residents for food stamp purposes.

(C) Students who are required to meet special eligibility criteria but fail to do so.

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 December 1, 1982.

TRD-829048 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355,
ext. 2037.

Subchapter W. Application Process

40 TAC §9.2235

The following amendments are adopted under the Human Resources Code, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements to be effective July 1, 1982.

§9.2235. Food Stamp Interviews.

(a) Workers must interview all clients face-to-face before certification. Workers conduct the interview with the head of the household, spouse, other responsible household member, or authorized representative (A/R). The client may bring any person he chooses to the interview.

(b)-(e) (No change.)

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

Issued in Austin, Texas, on December 1, 1982.

TRD-829049 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355,
ext. 2037.

Subchapter X. Non-PA Eligibility Determinations

40 TAC § 9.2316, 9.2319, 9.2321, 9.2324, 9.2326, 9.2327

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements to be effective July 1, 1982.

§9.2316. Approved Applications. An eligible household which completes the eligibility determination process must have an opportunity to participate as soon as possible but not later than 30 days following the date its application was filed. When the 30th day falls on a non-workday, the processing period ends on the last previous workday. The first day of the 30-day period is the day after the application is received in the appropriate food stamp office.

§9.2319. Missed Appointments.

(a) For households which miss the first scheduled interview appointment, an attempt must be made to schedule a second appointment within 30 days following the date the application was filed. The household need not show good cause for missing the first appointment.

The worker or designated person should attempt to schedule a second appointment.

(b) (No change)

§9.2321. Failure To Appear for an Interview. For households which have missed their initial interview, the worker must have attempted to schedule a second interview within 30 days following the date the application was filed. If the worker has met this requirement, the following situations constitute delay by the household.

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

(3) If the household has missed both scheduled interviews and by the 30th day following the date the application was filed makes a request for another interview, any further delay is the household's fault.

§9.2324. Applications Reopened.

(a) If the household takes the required action after denial but no more than 60 days following the date the application was filed, the worker must reopen the original application. The household will not be required to file a new application to obtain benefits. The household is, however, required to report changes which have occurred since the application was filed.

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

§9.2326. Delays beyond 60 Days.

(a) If DHR is at fault for not completing the application process within 60 days following the application date, the worker must take action as follows:

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

(b) If benefits are delayed more than 60 days following the application date, the worker must provide the household benefits through the restoration of lost benefits process.

§9.2327. Written Notice. The worker must give or mail the household one of the following notices as soon as a determination is made, but not later than the 30th day following the application file date.

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

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

Issued in Austin, Texas, on December 1, 1982.

TRD-829050 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

Subchapter Z. Changes

40 TAC §9.2513

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted

under federal requirements to be effective July 1, 1982.

§9.2513. Time Limit on Reporting Changes. Certified households must report changes within 10 days of the date the household knows about the change. Changes may be reported by mail, phone, in person, or through someone acting in the household's behalf. An applying household must report all changes related to its food stamp eligibility and benefits at the certification interview, including changes which occurred between filing the application and the interview. Within 10 days of the date of the notice of eligibility, the household must report changes specified in §9.2512 of this title (relating to Changes Required To Be Reported) which occur after the interview but before the date of the notice of eligibility. The requirement to report changes within 10 days of the date the household knows about the change does not apply to PA households required to submit status reports. These households meet the time limit for reporting a change by including the change in their status report.

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 December 1, 1982.

TRD-829051 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext.2037.

Subchapter FF. Citizenship

40 TAC §9.3113

The following new rule is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. This rule is adopted under federal requirements to be effective July 1, 1982.

§9.3113. Contact with INS. Workers must report to INS any illegal alien household members. Illegal aliens are persons the household indicates are in the U.S. in violation of the Immigration and Nationality Act.

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

Issued in Austin, Texas, on December 1, 1982.

TRD-829052 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

Subchapter II. Resources

40 TAC §§9.3401, 9.3404, 9.3410, 9.3411

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements to be effective July 1, 1982.

§9.3401. *Definition.*

(a) Resources are liquid and nonliquid assets. Applicants must report all household resources at the time of application.

(b) Available resources at the time the household is interviewed are used to determine the household's eligibility.

(c) The value of a resource is its fair market value less encumbrances, except for vehicles whose values are determined according to §9.3504 of this title (relating to Good Cause). The fair market value is the amount the resource would bring if sold or rented on the current local market.

(d) The resources of a nonhousehold member are not counted as available to the household. The resources, however, of a disqualified member are considered available in their entirety. This includes resources of individuals disqualified for fraud or for failure to meet the SSN requirements and resources of ineligible aliens who would have been considered household members except for their ineligible alien status.

(e) The resources of a child under 18 are counted as household resources unless otherwise exempt.

(f) Resources held jointly by separate households are considered totally available to each household unless it can be demonstrated that these resources are inaccessible. If the household can demonstrate that it has access to only a portion of the resource, only the value of the household's portion is considered. If the resource cannot practically be subdivided and the household's access to the value of the resource depends on the agreement of a joint owner who refuses to comply, then the resources must be considered totally inaccessible to the household. The same policies used to determine whether a resource is accessible to the household also apply to resources attributed to the household but owned by a disqualified member (including ineligible aliens living with the household).

§9.3404. *Exempt Resources.* Only the following are not considered household resources in determining eligibility.

(1) (No change.)

(2) Personal property.

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

(C) Burial plot. One burial plot is exempt for each household member (including disqualified household members).

(3) (No change.)

(4) Licensed vehicles. The resource value of licensed vehicles is determined as follows:

(A) The total value of the following is excluded:

(i) vehicles used more than 50% of the time for income-producing purposes

(ii) vehicles which annually produce income consistent with their fair market value, even if used only on a seasonal basis

(iii) vehicles necessary for long-distance travel, when the travel is essential to the employment of a household member, or disqualified household member, but not including daily commuting.

(iv) vehicles necessary for subsistence hunting or fishing.

(v) vehicles used as the household's home.

(vi) vehicles necessary to transport physically disabled household members or disqualified members who are physically disabled, regardless of the purpose of the trip. One of these vehicles may be excluded for each disabled member. There is no requirement that the vehicle be used exclusively or even primarily by or for the disabled person. Work registration disability criteria are used to determine disability for this exclusion. "Necessary to transport" means that the vehicle is especially equipped to meet the specific needs of a particular disabled member. It also includes vehicles without special equipment if the vehicle is of a special type that makes it possible to transport the disabled person

(vii) All of the exclusions in subparagraph (A) of this paragraph remain in effect when the vehicle is temporarily not being used.

(B) The household's primary vehicle and any other licensed vehicles necessary to transport household members or disqualified household members to and from employment or to and from training or education preparatory to employment must be individually evaluated for fair market value. The fair market value of each of these vehicles in excess of \$4,500 must be considered a resource to the household, regardless of any encumbrances on the vehicle or the household's investment in the vehicle. The worker's evaluation of the fair market value in excess of \$4,500 should be made for each individual vehicle. If the vehicle's value does not exceed \$4,500, it is exempt as a resource. This exemption remains in effect for vehicles used for employment purposes even during temporary periods of unemployment.

(C)-(D) (No change.)

(5)-(7) (No change.)

(8) Native and Indian Claims—Payments received under the Alaska Native Claims Settlement Act or the Sac and Fox Indian Claims Agreement are exempt as resources. Payments to the Grand River Band of Ottawa Indians (Public Law 94-540) and payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Public Law 94-420, §5) are also excluded from resources. Payments received by the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission as designated under Public Law 95-433, §2, are exempt as resources.

(9)-(14) (No change.)

§9.3410. *Transferring Resources.*

(a) Households which have knowingly transferred resources for the purpose of qualifying for food stamps

are disqualified from participation in the program for up to one year from the date the transfer is discovered. The disqualification applies if the resources of any household member or disqualified member were knowingly transferred in the three months before application or any time after the household is determined to be eligible for benefits. Acceptance of the client's statement at the time of the interview is sufficient to establish the reason for the transfer.

(b) (No change.)

§9.3411. *Transfers Not Affecting Eligibility.* Transfers of the following resources do not affect eligibility:

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

(4) Resources transferred between members of the same household (including disqualified persons).

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 December 1, 1982.

TRD-829053 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355; ext. 2037.

Subchapter OO. Definition of Income

40 TAC §9.4015, §9.4018

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements to be effective July 1, 1982.

§9.4015. *Domestic Volunteer Service Act.*

(a) Payments received by volunteers for services performed in programs stipulated in the Domestic Volunteer Service Act of 1973 (Public Law 93-113), Title II, as amended, are excluded as income. Programs include Foster Grandparents, Older Americans Community Service programs, Retired Senior Volunteer program, Service Corps of Retired Executives, and Active Corps of Executives.

(b)-(d) (No change.)

§9.4018. *Native and Indian Claims.* Payments received under the Alaska Claims Settlement Act or income derived from certain submarginal land of the United States which is held in trust for certain Indian tribes are exempt. Income from the disposition of funds to the Grand River Band of Ottawa Indians (Public Law 94-540) is likewise excluded from income. In addition, payments by the Indian Claims Commission to the Confederated Tribes and bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Public Law 95-433) and payments to the Passamaquoddy Tribe and the Penobscot Nation or any of their members received

pursuant to the Maine Indian Claims Settlement Act of 1980 (Public Law 96-420, §5) are excluded from income.

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 December 1, 1982.

TRD-829054 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date: July 1, 1982
Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

Subchapter RR. Self-employment Income

40 TAC §9.4306, §9.4308

The following amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which authorize the department to administer public assistance programs. These amendments are adopted under federal requirements to be effective July 1, 1982.

§9.4306. *Determining Monthly Income from Self-employment.*

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

(d) The anticipated monthly amount of capital gains and the anticipated monthly self-employment income are added and the anticipated costs of producing the income deducted. The cost is calculated by anticipating the monthly allowable costs of producing the self-employment income.

(e) (No change.)

§9.4308. *Deductions from Gross Income of Self-employment.* Determine net income from self-employment by deducting from gross income any identifiable costs of doing business. Never may a loss from self-employment be deducted from other income. In determining the amount to be deducted from gross income as the cost of producing income, the following may not be deducted.

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

(5) Do not deduct depreciation.

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 December 1, 1982.

TRD-829055 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

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Proposal publication date: N/A
For further information, please call (512) 441-3355, ext. 2037.

member. All but the disqualified person's pro rata share is counted as household income. Any cash contributions to the household made by the disqualified person from his own pro rata share of income are counted in full as household income.

§9.5506. Worker Action when a Household Member Is Disqualified.

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

(c) The worker must give the client a notice of adverse action when benefits are reduced or terminated because one or more of its members is being disqualified as an ineligible alien. The notice must be sent to inform the household that the individual is being disqualified, the reason for the disqualification, the eligibility and benefit level of the remaining members, and the action

the household must take to end the disqualification, if applicable.

(d) (No change.)

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

Issued in Austin, Texas, on December 1, 1982.

TRD-829057

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: July 1, 1982

Proposal publication date: N/A

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 Department of Agriculture

Wednesday, December 15, 1982, 9 a.m. The Agricultural and Environmental Sciences Division of the Texas Department of Agriculture will meet in Room 1046, Stephen F. Austin Building, 17th Street and Congress Avenue, Austin. According to the agenda, the division will conduct a formal adjudicative hearing in Docket 20-82-AEP-suspension, modification, or revocation of current commercial pesticide applicator's License 00649 issued to J. M. Christensen, Munday, for alleged violation of the Texas Agriculture Code (1981), §76.116(a)(1), (2), and (5); and Texas Civil Statutes, Article 135b-5a, §26(a)(1) and (2).

Contact: David Ivie, P.O. Box 12847, Austin, Texas 78711, (512) 475-4457.

Filed: December 1, 1982, 3:46 p.m.
TRD-829066

State Banking Board

Thursday, December 9, 1982, 2 p.m. The State Banking Board will meet at 2601 North Lamar, Austin. According to the agenda, the voting session of the board will include application for charter for Texas Bank of Plano, Plano; interim charter applications for New Alamo Bank of Texas,

Alamo; New Bank of Commerce-Point Comfort, Point Comfort; New Pilot Point State Bank, Pilot Point; New Canton Bank, Canton; New Northway Bank, Addison; New Richardson Bank, Richardson; New American Bank of Plano, Plano; Allied Bank Southwest Freeway, Houston; New First State Bank of Smithville, Smithville; and New Security State Bank, Pharr; domicile changes for Commercial State Bank, Houston; and Brush Country Bank, Freer; consideration of ATM complaint against First Bank and Trust, Bryan; rescission of interim charter for New Bank of Pasadena, Pasadena; and a review of applications approved, but not yet open for business.

Contact: O. A. Cassity III, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Filed: November 30, 1982, 3:09 p.m.
TRD-829034

An addition to the above agenda:

Voting on the charter application for Woodson State Bank.

Contact: O. A. Cassity III, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Filed: December 1, 1982, 3 p.m.
TRD-829062

Texas County and District Retirement System

Wednesday, December 8, 1982, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at the Marriott Hotel, Austin. According to the agenda summary, the board will read the minutes of the September 22, 1982, regular board meeting; consider and pass on applications for service retirement benefits and disability retirement benefits; review and act on reports from actuary, legal counsel, investment counsel, and the director; consider a proposed budget for 1983; elect officers for 1983; and set the date of the March board meeting.

Contact: J. Robert Brown, 802 Perry-Brooks Building, Austin, Texas 78701, (512) 476-6651.

Filed: November 30, 1982, 2:29 p.m.
TRD-829030

Texas Commission for the Deaf

Saturday, December 11, 1982, 9 a.m. The Texas Commission for the Deaf will meet on the lower level, 510 South Congress, Austin. According to the agenda, the commission will approve minutes of the previous meeting; hear reports of the Board

for Evaluation of Interpreters, the Texas Association of the Deaf, and the director and staff; hear an update on funding legislation; and discuss the chairman's report concerning the site of the next meeting.

Contact: Fred R. Tammen, P.O. Box 12904, Austin, Texas 78711, (512) 475-2492.

Filed: December 1, 1982, 10:19 a.m.
TRD-829043

Saturday, December 11, 1982, 9 a.m. The Board for Evaluation of Interpreters of the Texas Commission for the Deaf will meet in Room 300, 510 South Congress Avenue, Austin. According to the agenda, the board will consider minutes from the previous meeting; discuss the future direction of the board; consider reports regarding the use of teams of evaluators, Level I certification, and development of additional Level V tests; consider direction of the board regarding testing at Levels IV and V during fiscal year 1983; hear the chairperson's report, an update on activities of the Advisory Committee on Specialty Certification of Interpreters for the Deaf, and a progress report on revisions of the grievance procedure; and consider evaluation criteria for Levels IV and V.

Contact: Fred R. Tammen, P.O. Box 12904, Austin, Texas 78711, (512) 475-2492.

Filed: December 1, 1982, 3:12 p.m.
TRD-829065

State Depository Board

Thursday, December 2, 1982, 11 a.m. The State Depository Board met in emergency session at 111 East 17th Street, Austin. Items on the agenda included review and establishment of interest rates charged on time account deposits. The board also reviewed applications for designation that have been received since the November 4, 1982, board meeting. The emergency status was necessary to remain competitive with rapidly changing interest and money market rate changes.

Contact: Warren G. Harding, P.O. Box 12608, Austin, Texas 78711, (512) 475-2591.

Filed: December 1, 1982, 10:59 a.m.
TRD-829058

Feed and Fertilizer Control Service

Thursday, January 6, 1983, 10 a.m. The Feed and Fertilizer Control Service will meet

in Room 502, Rudder Tower, Texas A&M University, College Station. According to the agenda, the service will review proposed amendments to 4 TAC §61.14 and §61.17.

Contact: I. J. Shenkir, P.O. Box 3160, College Station, Texas 77841, (713) 845-1121.

Filed: November 30, 1982, 1:56 p.m.
TRD-829032

Texas Health Facilities Commission

Friday, December 10, 1982, 9 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 applications.

Amendment of Certificate of Need Orders

Belle Park Hospital, Houston

AH79-1004-031A(110182)

Warm Springs Rehabilitation Hospital,
Gonzales

AH80-0904-004A(102082)

Biomedical Applications of Carthage,
Inc., Carthage

AS80-1229-059A(091082)

Surgery Center of Fort Worth,
Fort Worth

AO81-0505-011A(092782)

Notice of Intent to Acquire an Existing
Health Care Facility

Fair Park Health Care, Inc., Dallas

AN82-1103-151

Motion for Rehearing/Reconsideration

Scott and White Memorial Hospital, and

Scott, Sherwood, and Brindley

Foundation, Temple

AH82-0420-022

Contact: John R. Neel, P.O. Box 50049,
Austin, Texas 78763.

Filed: December 1, 1982, 9:28 a.m.
TRD-829037

State Board of Insurance

Thursday, December 9, 1982, 9 a.m. The State Board of Insurance will meet in Room E, John H. Reagan Building, 105 West 15th Street, Austin. According to the agenda, the board will conduct a public hearing to consider a revision of the Texas commercial multi-peril rates, premiums, rating plans, amendments to the general basis schedules, and all other rating matters pertaining to

the Texas commercial multi-peril insurance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, (512) 475-2950.

Filed: November 30, 1982, 10:34 a.m.
TRD-829022

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. The days, times, rooms, and agendas follow.

Thursday, December 9, 1982, 2 p.m. In Room 414, the board will consider an appeal of Charles Wade from a commissioner's order; hear a motion for rehearing filed by Esco Elevators, Inc.; hear a joint motion for dismissal in the appeal of Anthony Endres from action of the Texas Catastrophe Property Insurance Association; reach a decision on the plea to the jurisdiction filed by the Texas Catastrophe Property Insurance Association in the appeal of Lindsey and Newsom, Inc., from action of the Texas Catastrophe Property Insurance Association; and consider a motion for a rehearing filed by the Board of Governors of Padre South Condominium.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, (512) 475-2950.

Filed: November 30, 1982, 10:33 a.m.
TRD-829023

Additions to the above agenda:

Discussion of Rule 059.17.25.002; proposed posting of new Rules 059.01.11.021 and .022, new Rule 059.50.40.041 and amendments to Rule 059.01.10.002 with the *Texas Register*; repeal of Rules 059.05.26.002 and .006, and 059.01.15.001, .003, and .004, and amendments to Rules 059.05.28.001, .002, 059.01.15.223, and 059.03.01.001, all published in the *Texas Register* (7 TexReg 3875-80). The board will also hold a public hearing to consider amendments to Texas Insurance Advisory Association articles of association and bylaws.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, (512) 475-2950.

Filed: December 1, 1982, 3:39 p.m.
TRD-829064, 829063

Monday, December 13, 1982, 9 a.m. In Room 342, the board will consider the appeal of Tex-Ken, Inc., Tex Holiday-Emerald Beach, and Winegardner and Hammons, Inc., from the decision of the Texas Catastrophe Property Insurance Association.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, (512) 475-2950.

Filed: December 1, 1982, 10:18 a.m.
TRD-829042

Lamar University

Tuesday, December 7, 1982. Committees of the Lamar University Board of Regents will meet in the board room, Plummer Administration Building, Main Campus, Beaumont. Times, committees, and agendas follow.

3 p.m. The Personnel Committee will meet in executive session to review personnel appointments.

3:30 p.m. The Building and Grounds Committee will meet in executive session to review bids received.

Contact: Andrew J. Johnson, P.O. Box 10014, Beaumont, Texas 77710, (713) 838-8404.

Filed: November 30, 1982, 10:44 a.m.
TRD-829025, 829026

Texas State Board of Examiners of Psychologists

Monday, December 6, 1982, 9 a.m. The Texas State Board of Examiners of Psychologists made an emergency revision to the agenda of a meeting to be held in Suite C-270, 1300 East Anderson Lane, Austin. Items on the revised agenda included consideration of complaint files, rules and regulations, proposed supervision guidelines, HSP training setting proposal, substantial equivalency, and the jurisprudence exam. The emergency status was necessary to consider alternatives in case the revocation hearing is canceled or postponed.

Contact: Patti Bizzell, 5555 North Lamar, Building H, Suite 126, Austin, Texas 78751, (512) 458-3295.

Filed: December 1, 1982, 10:19 a.m.
TRD-829044

Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The days, times, and dockets follow.

Friday, December 10, 1982, 10 a.m. A prehearing conference in Docket 4620—application of El Paso Electric Company for authority to change electric rates.

Contact: Carolyn E. Shellman, 7800 Shoal

Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: December 1, 1982, 10:18 a.m.
TRD-829041

Friday, December 17, 1982, 9 a.m. A prehearing conference in Docket 4796—petition of Houston Lighting and Power Company for review of a rate ordinance for the City of Friendswood.

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

Filed: December 1, 1982, 2:20 p.m.
TRD-829060

Monday, December 27, 1982, 10 a.m. A hearing in Docket 4817—inquiry into the rates of Clear Lake Pines Water System.

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

Filed: December 1, 1982, 2:19 p.m.
TRD-829061

Thursday, January 20, 1983, 9 a.m. A hearing on the merits in Docket 4824—application of Southwest Utilities, Inc., for authority to change rates.

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

Filed: December 2, 1982, 9:28 a.m.
TRD-829079

Tuesday, February 1, 1983, 9 a.m. A rescheduled hearing on the merits in Docket 4572—complaint of Nueces Electric Cooperative, Inc., against Central Power and Light Company. This hearing is rescheduled from December 30, 1982, as published at 7 TexReg 3962.

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

Filed: November 30, 1982, 10:33 a.m.
TRD-829024

Texas Rehabilitation Commission

Friday, December 17, 1982, 9:30 a.m. The Board of the Texas Rehabilitation Commission will meet at 118 East Riverside Drive, Austin. Items on the agenda summary include approval of the September 17, 1982, board meeting minutes; the commissioner's report on operations; status of legislation for consideration by the 68th Legislature;

a financial report; the Developmental Disabilities Program; and review of litigation and personnel practices involving the commission.

Contact: Vernon Newman, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8126.

Filed: December 1, 1982, 10:19 a.m.
TRD-829045

Texas

Sesquicentennial Museum Board

Thursday, December 16, 1982, 10 a.m. The Texas Sesquicentennial Museum Board will meet in the auditorium, third floor, United Bank Building, 15th and Guadalupe Streets, Austin. According to the agenda, the board will approve minutes from the prior two meetings; discuss the draft report of the needs assessment study by the Management Strategies Group prior to final approval; and discuss miscellaneous items.

Contact: Fran Lochridge Forbes, Sam Houston Building, Room 512, Austin, Texas, (512) 475-1615.

Filed: December 1, 1982, 9:28 a.m.
TRD-829036

Advisory Council for Technical-Vocational Education in Texas

Thursday, December 16, 1982, 10 a.m. The Steering Committee of the Advisory Council for Technical-Vocational Education will meet in Suite 202, 1700 South Lamar, Austin. According to the agenda, the committee will review the statewide study on vocational education, review selected items on the program of work, and discuss information items.

Contact: Val Blaschke, P.O. Box 1886, Austin, Texas 78767, (512) 475-2046.

Filed: November 30, 1982, 2:22 p.m.
TRD-829031

Texas Tech University

Wednesday, December 8, 1982, 9 a.m. The Ad Hoc Committees of the Texas Tech University Board of Regents and the Texas Tech University Health Sciences Center Board of Regents will meet in joint session

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at The Mansion on Turtle Creek restaurant, 2821 Turtle Creek Boulevard, Dallas. According to the agenda, the committees will meet in executive session.

The Texas Tech University Board of Regents will also consider a change in board Policy 01-01-01.011, regarding review date of performance and salaries of designated officers.

The Texas Tech University Health Sciences Center Board of Regents will also review and consider its policy manual.

Contact: Freda Pierce, P.O. Box 4039, Lubbock, Texas 79409, (806) 742-2161.

Filed: December 1, 1982, 10:12 a.m.
TRD-829039, 829040

Texas Water Commission

Monday, December 13, 1982, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda summary include water district bond issues, release from escrow, approval to incur debt, water quality proposed permits, amendments and renewals, use of underground and surface water, extension of time to commence and complete construction, approval of preliminary plans, withdrawal of application, final decisions, motion to assess cost of transcript, motion for rehearing, and filing and setting of hearing dates.

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

Filed: December 1, 1982, 3:27 p.m.
TRD-829067

Tuesday, January 11, 1983, 10 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda include hearings on Application 4268 of Sam J. Friedman and Douglas D. Bennett, doing business as Lone Star Hereford Ranch, for a permit to divert 3,600 acre-feet of water per annum from the Little Wichita River, tributary of the Red River, Red River Basin, for irrigation purposes in Clay County; Application 2134B of the Trinity River Authority of Texas seeking an amendment to Permit 1948, as amended, to change the purpose of use of 450 acre-feet of state water per year to be diverted for industrial purposes in Navarro and Hill Counties; and application by the City of Marlin for an amendment to Per-

mits 1449 and 3407 to combine and authorize increases in the impounding capacities of Old Marlin City Lake and New Marlin City Lake, on Big Sandy Creek, tributary of Big Creek, tributary of Mussel Run Creek, in Brazos River Basin, Falls County.

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

Filed: December 1, 1982, 3:27 p.m.
TRD-829077, 829074, 829069

Wednesday, January 12, 1983, 10 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda include hearings on Application 4267 of Kirby Forest Industries, Inc., for a permit to divert water from an unnamed tributary of Mill Creek, tributary of Big Sandy Creek, tributary of Sabine River, Sabine River Basin, for irrigation purposes in Wood County; Application 4266 of Robert M. Stanton and Joyce R. Stanton for a permit to divert and use not to exceed 35 acre-feet of water per year from San Miguel Creek, tributary of Frio River, tributary of Nueces River, Nueces River Basin, for irrigation purposes in Medina County; and Application 3574A of the City of Mount Vernon for an amendment to Permit 3287 to increase its appropriation of state water, Sulphur River Basin, Franklin County.

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

Filed: December 1, 1982, 3:29 p.m.
TRD-829070, 829072, 829073

Thursday, January 13, 1983, 10 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda include hearings on an application by Louis F. Peters, *et al.*, seeking an amendment to Certificate of Adjudication 16-2098, Lavaca River Basin and Lavaca-Guadalupe Coastal Basin in Jackson County, and an application by Louis F. Peters, *et al.*, seeking an amendment to Certificate of Adjudication 16-2098, Lavaca River Basin and Lavaca-Guadalupe River Basin in Jackson County.

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

Filed: December 1, 1982, 3:29 p.m.
TRD-829075, 829076

Tuesday, January 18, 1983, 10 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building,

1700 North Congress, Austin. Items on the agenda include hearings on Application 4269 of Louis G. Fears for a permit to divert and use 10 acre-feet of water per annum from Waffelow Creek, tributary of Naconiche Creek, tributary of Attoyac Bayou, tributary of Angelina River, tributary of Neches River, Neches River Basin, for irrigation purposes in Nacogdoches County.

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

Filed: December 1, 1982, 3:28 p.m.
TRD-829071

Thursday, January 20, 1983, 10 a.m. The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress, Austin. Items on the agenda include a hearing on Application 4270 of Mary D. Walsh for a permit to directly divert 270 acre-feet of water per annum from the Brazos River for irrigation purposes in Falls County.

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

Filed: December 1, 1982, 3:27 p.m.
TRD-829068

Regional Agencies Meetings Filed November 30

The Brazos Valley Development Council, Board of Directors, will meet at 3232 Briarcrest Drive, Bryan, on December 9, 1982, at 1:30 p.m. Information may be obtained from Glenn J. Cook, P.O. Drawer 4128, Bryan, Texas 77805-4128, (713) 822-7421.

The Callahan County Appraisal District, Board of Directors, will meet in the courtroom, Callahan County Courthouse, Baird, on December 7, 1982, at 7 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 1055, Baird, Texas 79504, (915) 854-1165.

The Dewitt County Appraisal District, Board of Directors, will meet at 103 Bailey Street, Cuero, on December 8, 1982, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Region II Education Service Center, Board of Directors, will meet at 209 North Water, Corpus Christi, on December 14, 1982, at 6:30 p.m. Information may be ob-

tained from Gerald V. Cook, 209 North Water, Corpus Christi, Texas, (512) 883-9288.

The Golden Crescent Regional Planning Commission, Board of Directors, will meet in the LaSalle Room, Victoria Bank and Trust Building, 120 South Main, Victoria, on December 15, 1982, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Interim Regional Transportation Authority, Executive Committee of the Board of Directors, met in emergency session in Room 6ES, Dallas City Hall, on December 2, 1982, at 7:30 a.m. Information may be obtained from Cinde Weatherby, Suite 406, Love Field Terminal Building, Dallas, Texas 75235, (214) 358-3216.

The Tarrant County Appraisal District, Board of Directors, will meet in Suite 300, 1701 River Run, Fort Worth, on December 9, 1982, at 10 a.m. Information may be obtained from Nelson F. Eichman, 1701 River Run, Suite 200, Fort Worth, Texas 76107, (817) 332-3151.

The Taylor County Central Appraisal District, Board of Directors, will meet in the commissioner's courtroom, Taylor County Courthouse, Abilene, on December 8, 1982, at 10 a.m. Information may be obtained from Richard Petree, P.O. Box 3738, Abilene, Texas 79604, (915) 676-9381.

TRD-829021

Meetings Filed December 1

The Amarillo Mental Health and Mental Retardation Regional Center, Executive Committee, will meet in Room G-15, Psychiatric Pavillion, 7201 Evans, Amarillo, on December 9, 1982, at noon, and the Board of Trustees will meet in Room J-13 on the same day at 1 p.m. Information may be obtained from Claire Rigler, P.O. Box 3250, Amarillo, Texas 79106, (806) 358-9031.

The Central Appraisal District of Erath County, Board of Directors, will meet at 1191 South Loop, Stephenville, on December 8, 1982, at 10 a.m. Information may be obtained from James Bachus, 1191 South Loop, Stephenville, Texas 76401, (817) 965-5434.

The Region VII Education Service Center, Board of Directors, will meet at Johnny

Cace's Restaurant, Highway 80, Longview, on December 14, 1982, at 7 p.m. Information may be obtained from Don J. Peters, 818 East Main Street, Kilgore, Texas 75662, (214) 984-3071.

The Region XII Education Service Center, Board of Directors, will meet at 401 Franklin Avenue, Waco, on December 16, 1982, at 7:30 p.m. Information may be obtained from Mack W. Mullins, P.O. Box 1249, Waco, Texas 76703, (817) 756-7494.

The Region XVIII Education Service Center, Board of Directors, will meet at the Region XVIII ESC, LaForce Boulevard, Midland Air Terminal, Midland, on December 16, 1982, at 7:30 p.m. Information may be obtained from J. W. Donaldson, P.O. Box 6020, Midland, Texas 79701, (915) 563-2380.

The Gonzales County Appraisal District, Board of Directors, met in emergency session in Suite 201, Gonzales Bank Building, 508 Saint Louis Street, Gonzales, on December 2, 1982, at 8:30 a.m. Information may be obtained from Nancy Seitz, P.O. Box 867, Gonzales, Texas 78629, (512) 672-2879.

The Hamilton Appraisal District met in emergency session in the central appraisal office, Hamilton County Courthouse, Hamilton, on December 2, 1982, at 7:30 p.m. Information may be obtained from Doyle Roberts, P.O. Box 446, Hamilton, Texas 76531, (817) 386-8418.

The Hays County Central Appraisal District, Board of Directors, met in the board room, 501 South LBJ, San Marcos, on December 6, 1982, at 5 p.m. Information may be obtained from H. William Beare, P.O. Box 1287, San Marcos, Texas 78666, (512) 396-4777.

The Interim Regional Transportation Authority, Communications and Community Involvement Committee, met in emergency session in Room 5 CS, Dallas City Hall, on December 2, 1982, at 9:30 a.m. Information may be obtained from Cinde Weatherby, Lock Box 12, Dallas, Texas 75235, (817) 640-3300.

The Middle Rio Grande Development Council, Regional Alcoholism Advisory Committee, will meet in the Uvalde City Council Chambers, on December 15, 1982, at 2 p.m. Information may be obtained from Ramon S. Johnston, Del Rio National Bank, Suite 307, Del Rio, Texas 78840, (512) 774-3878.

The Nueces River Authority, Board of Directors, will meet at the La Quinta Royale Motor Inn, 601 North Water Street, Corpus Christi, on December 16, 1982, at 11 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78801, (512) 278-6810.

The Panhandle Regional Planning Commission, Board of Directors, will meet in Suite 200, first floor conference room, Gibraltar Building, Eighth and Jackson Streets, Amarillo, on December 9, 1982, at 1:30 p.m. Information may be obtained from Polly Jennings, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381.

The San Patricio County Appraisal District, Board of Directors, will meet in Room 226, courthouse annex, Sinton, on December 9, 1982, at 9:30 a.m. Information may be obtained from Bennie L. Stewart, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

TRD-829035

Meetings Filed December 2

The Dallas County Appraisal District, Appraisal Review Board, will meet at 6201 Live Oak, Dallas, on December 9, 1982, at 9:30 a.m. Information may be obtained from Rick L. Kuehler, 2601 Live Oak, Dallas, Texas 75204, (214) 826-0030.

The Fisher County Appraisal District, Appraisal Review Board and Board of Directors, will meet in the Hospitality Room, Fisher County Courthouse, Roby, on December 10, 1982, at 8 p.m. The Board of Directors will meet at the same location and time on December 14, 1982. Information may be obtained from Billie L. Holcomb, P.O. Box 516, Roby, Texas 79543.

The Garza County Appraisal District, Board of Directors, will meet in the courthouse, Post, on December 7, 1982, at 3 p.m. Information may be obtained from Jean M. Westfall, P.O. Drawer F, Post, Texas 79356, (806) 495-3939

The High Plains Underground Water Conservation District No. 1, Board of Directors, will meet in the conference room, 2930 Avenue Q, Lubbock, on December 14, 1982, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

The Red River Authority of Texas, Board of Directors, will meet in Room 235, Ac-

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tivity Center, 608 10th Street, Wichita Falls, on December 9, 1982, at 10 a.m. Information may be obtained from Fred Parkey, 302 Hamilton Building, Wichita Falls, Texas, (817) 723-8697.

The South Texas Development Council, Regional Alcoholism Advisory Committee, will meet in the conference room, 600 South Sandman, Laredo, on December 8, 1982, at 10 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78041, (512) 722-3995.

The South Texas Development Council, Advisory Committee on Aging, will meet

in the conference room, 600 South Sandman, Laredo, on December 8, 1982, at 2 p.m. Information may be obtained from Andy Smith, Jr., P.O. Box 2187, Laredo, Texas 78041, (512) 722-3995.

The South Texas Development Council, STED Corp., will meet at Roma City Hall, Roma, on December 9, 1982, at 11 a.m. Information may be obtained from Roberto Mendiola, P.O. Box 2187, Laredo, Texas 78041, (512) 722-3995.

The South Texas Development Council, Board of Directors, will meet at Roma City

Hall, Roma, on December 9, 1982, at 2 p.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78041, (512) 722-3995.

The Tarrant County Appraisal District, Appraisal Review Board, will meet in Suite 300, 1701 River Run, Fort Worth, on December 8, 14, and 15, 1982, at 8:30 a.m. daily. Information may be obtained from Bobby Reed, 1701 River Run, Suite 200, Fort Worth, Texas 76107, (817) 332-3151.
TRD-829078

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.

In Addition

Texas Department of Community Affairs Request for Proposals

Notice of Invitation for Program Proposals. This request is not filed under Texas Civil Statutes, Article 6252-11c.

The Texas Department of Community Affairs (TDCA), administering agency for the Community Services Block Grant (CSBG) in Texas for federal fiscal year (FFY) 1983, announces a request for proposals (RFP) to deliver services in three categories of special programs under the CSBG. The three categories, described in detail below, are special food programs, housing programs, and innovative programs on the causes of poverty.

Selected offerors will be expected to assume responsibility for delivery of appropriate services and activities authorized by the Community Services Block Grant Act, Public Law 97-35, 42 United States Code §§671-683, 9901-9912. Activities must be designed to assist low-income participants, including the elderly poor.

Category A—Special Food Programs—one statewide contract for not more than \$75,000. This special program should be designed to address the activities described in Public Law 97-35, 42 United States Code §675(c)(1)(C), which states the activities are "to provide on an emergency basis for the provision of such supplies and services, nutritious food stuffs, and related services as may be necessary to counteract conditions of starvation and malnutrition among the poor."

Offerors must submit a detailed budget reflecting the cost of the proposed programs. Programs should be proposed for a 12-month period, January 14, 1983, through January 14, 1984. Contractor support (match) is required at a minimum of 20% of the total budget. The contractor support or match share may be cash or "in kind" support.

Category B—Special Housing Programs—one contract of not more than \$75,000. This special program should be designed to address the activities described in Public

Law 97-35, 42 United States Code §675(c)(1)(B)(iv), which states the activities should "obtain and maintain adequate housing and a suitable living environment."

Please note: This Category B does not relate to weatherization or energy conservation projects, as those are handled through other programs at the state level.

Offerors must submit a detailed budget reflecting the cost of the proposed programs. Programs should be proposed for a 12-month period, January 14, 1983, through January 14, 1984. Contractor support (match) is required at a minimum of 20% of the total budget. The contractor support or match share may be cash or "in-kind" support.

Category C—Special Innovative Programs on the Causes of Poverty—one statewide contract of not more than \$75,000. This special program should be designed to address the activities described in Public Law 97-35, 42 United States Code §675(c)(1)(A). This section states the funds are to be used "to provide a range of services and activities having a measurable and potentially major impact on causes of poverty in the community or those areas of the community where poverty is a particularly acute problem." The Texas Department of Community Affairs is requesting proposals for innovative programs which directly impact on the causes of poverty.

Offerors must submit a detailed budget reflecting the cost of the proposed programs. Programs should be proposed for a 12-month period, January 14, 1983, through January 14, 1984. Contractor support (match) is required at a minimum of 20% of the total budget. The contractor support or match share may be cash or "in kind" support.

Although proposals need not address all services and activities authorized by the CSBG act, the more activities and services incorporated in the proposal, the more points the proposal will receive in the evaluation process. In other words, a proposal submitted under Category B—Special Housing Programs, which improves housing and also provides employment-related assistance will be given more consideration than one that provides only housing.

Slaton Hospital Memorial Foundation,
doing business as Mercy Hospital, Slaton
AH80-0818-048A(100182)

CN/AMD—Acceptance of an amended amend-
ment application. Request to increase the project
cost from \$1.3 million to \$3,797,000 and to extend
the completion deadline from April 1, 1983, to
April 1, 1984, in Certificate of Need AH80-0818-
048 which authorized Slaton Hospital Memorial
Foundation, Inc., doing business as Mercy Hospi-
tal, to construct and operate a 30-bed, 17,466
square-foot, one-story facility containing ancillary
areas, four OB/GYN and 26 medical/surgical beds
in 14 private and eight semi-private rooms, and of-
fering emergency, radiology, laboratory,
respiratory therapy, surgery, and pharmacy ser-
vices. The new facility will replace the certificate
holder's existing 40-bed facility.

Park North General Hospital, Inc., San Antonio
AN81-1124-213

NIEH—Request for a declaratory ruling that a cer-
tificate of need is not required for Park North
General Hospital, Inc., to acquire by purchase, on
or after January 26, 1983, Park North General
Hospital, an existing 100-bed hospital with 46
medical/surgical, four ICU, and 50 psychiatric
beds, located in San Antonio, from Pat Legan.

Issued in Austin, Texas, on December 1, 1982.

TRD-829038

John R. Neel
General Counsel
Texas Health Facilities
Commission

Filed: December 1, 1982

For further information, please call (512) 475-6940.

Texas Department of Human Resources Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c,
the Texas Department of Human Resources (TDHR) is
requesting proposals for consulting services.

Description. TDHR plans to contract with a consultant
to conduct a study to determine ways to contain costs
in the Texas Medical Assistance Program. The consul-
tant must have had experience in the Texas Medical
Assistance Program in the past 12 months to be con-
sidered and must have a working knowledge of the United
States Health Care Financing Administration. Additional
qualifications are also sought.

Agency Contact. Any firm or individual desiring more
information may contact Glenn A. Scott, Supervising At-
torney, Texas Department of Human Resources—170-B,
P.O. Box 2960, Austin, Texas 78769, (512) 441-3355, ext.
3057.

Closing Date. Closing date for receipt of offers is
December 31, 1982.

Selection Criteria. The contract award will be based on
demonstrated competence in the Medicaid Program, the
technical proposal, and reasonableness of cost.

Issued in Austin, Texas, on November 29, 1982.

TRD-829003

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Filed: November 29, 1982

For further information, please call (512) 441-3355,
ext. 2037.

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In the second issue of every month, a guide to agency activity for the previous month is published. Quarterly and annual indexes to the *Register* are published separately and bound in light blue for distinction

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Nov. 53893
Nov. 83924
Nov. 123962
Nov. 164006
Nov. 294050
Dec. 164087

SESQUICENTENNIAL MUSEUM BOARD, TEXAS
Open Meetings
Nov. 163924

**SOIL AND WATER CONSERVATION
BOARD, TEXAS STATE**
Open Meetings
Nov. 173924, 4050

**SOUTH PLAINS ASSOCIATION OF
GOVERNMENTS**
Open Meetings
Nov. 94009

**SOUTH PLAINS HEALTH PROVIDER
ORGANIZATION, INC.**
Open Meetings
Oct. 253895
Nov. 224118

SOUTH TEXAS DEVELOPMENT COUNCIL
Open Meetings
Nov. 174053
Nov. 244089

SOUTH TEXAS HEALTH SYSTEMS AGENCY
Open Meetings
Nov. 204054

STRUCTURAL PEST CONTROL BOARD
Open Meetings
Nov. 43893

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Nov. 10-123962
Dec. 1-34117

SUPREME COURT OF TEXAS
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Announcement of Meeting3899

SURPLUS PROPERTY AGENCY, TEXAS
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SWISHER COUNTY APPRAISAL DISTRICT
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TARRANT COUNTY APPRAISAL DISTRICT
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 Nov. 5 3926
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TAX ASSESSOR EXAMINERS BOARD
 Open Meetings
 Nov. 9 3924

TAYLOR COUNTY CENTRAL APPRAISAL DISTRICT
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TEACHER RETIREMENT SYSTEM OF TEXAS
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TECHNICAL VOCATIONAL EDUCATION IN TEXAS, ADVISORY COUNCIL FOR
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TEXAS A & M UNIVERSITY SYSTEM
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TEXAS STATE UNIVERSITY SYSTEM
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TEXAS TECH UNIVERSITY
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TYLER COUNTY TAX APPRAISAL DISTRICT
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UNIFORM STATE LAWS, COMMISSION ON
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 Nov. 6 3924

UNIVERSITY INTERSCHOLASTIC LEAGUE
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UPPER LEON RIVER MUNICIPAL WATER DISTRICT
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UPSHUR COUNTY APPRAISAL DISTRICT
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VETERANS AFFAIRS COMMISSION
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VETERANS LAND BOARD
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VETERINARY MEDICAL EXAMINERS, STATE BOARD OF
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WISE COUNTY APPRAISAL DISTRICT

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TAC Titles Affected—November

The following is a list of the TAC titles affected by agency activity in November.

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1 TAC §123.17	4035

TITLE 4. AGRICULTURE

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4 TAC §5.211	4036
4 TAC §7.1, §7.24	3912
4 TAC §15.3	3884

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Part II. Texas Industrial Commission

10 TAC §107.2	4102
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TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

13 TAC §§17.1-17.3	3917
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Part IV. Antiquities Committee

13 TAC §41.3	3975
13 TAC §41.24	3976

TITLE 16. ECONOMIC REGULATION

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16 TAC §5.236	3949
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TITLE 19. EDUCATION

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19 TAC §21.55	3993
19 TAC §21.63	3978
19 TAC §21.124	3993
19 TAC §21.176	3870

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Part XII. Board of Vocational Nurse Examiners	Part VII. State Property Tax Board
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22 TAC §463.20 3871	Part IX. Commission on Jail Standards
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22 TAC §501.3 3917	37 TAC §261.42 4039
22 TAC §501.25 3918	37 TAC §261.148 4039
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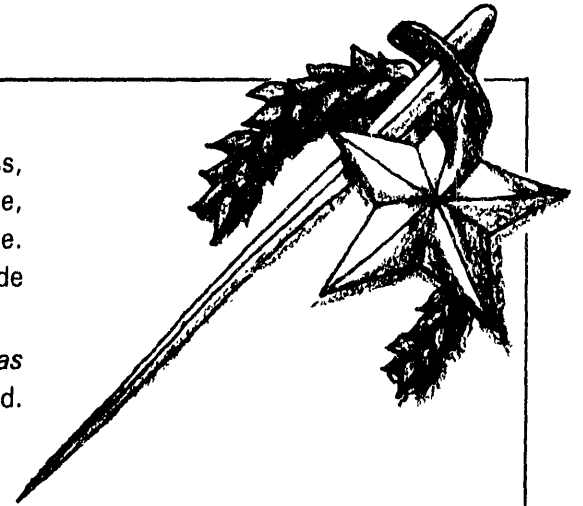
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