

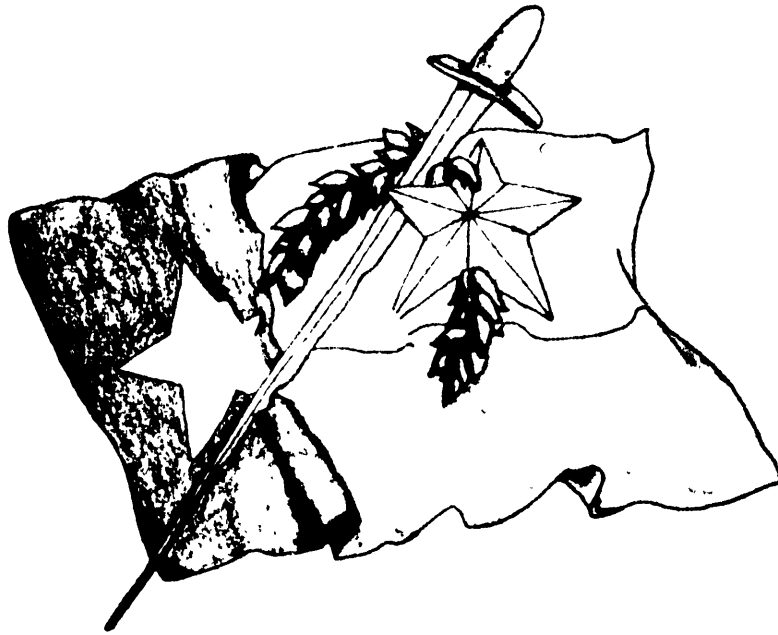
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Texas Register

OCT 21 1983



Highlights

- ★ The Public Utility Commission of Texas proposes the repeal of existing rules and simultaneously proposes new replacement rules in a chapter concerning substantive rules; earliest possible date of adoption - November 18 page 4243
- ★ The Texas Department of Health proposes amendments and a new rule concerning procedures on long-term care facilities, proposed date of adoption - December 10 page 4253
- ★ The State Board of Insurance proposes new rules concerning replacement of life insurance; earliest possible date of adoption - November 18 page 4260

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 1983 with the exception of January 25, March 8, April 26, and November 29, 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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- 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- Withdrawn Rules - rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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
- Legislature - Bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- 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 "8 TexReg 2 - issue date," while on the opposite page, in the lower right-hand corner, page 3 is written "issue date 8 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. 10, December 1982

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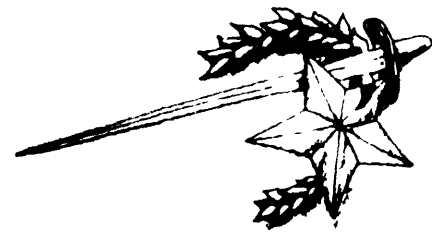
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Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *Register* at least 30 days before any action may be taken. The 30 day time period gives interested persons an opportunity to review and make oral or written comments on the rule. 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.

The proposal, 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 statutory authority under which the proposed rule is to be adopted (and the agency's interpretation of the statutory authority), the text of the proposed action, and a certification statement. The certification information, which includes legal authority, the proposed date of adoption or the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

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

Proposed Rules

TITLE 1. ADMINISTRATION Part 1. Office of the Governor Chapter 5. Budget and Planning Division

(Editor's note: Because of errors which occurred in the following rules submitted by the Office of the Governor and published in the October 11, 1983, issue of the Texas Register (8 TexReg 4051), the entire submission is being republished in this issue. Proposed date of adoption for the rules remains December 1, 1983, as previously published.)

The Office of the Governor proposes to repeal §§ 11.5-14, concerning state review of federal grant assistance applications. The Office of the Governor at this time is also proposing new §§ 191.5-271, concerning state and local review of federal and state assistance applications. The proposed sections will create two new subchapters, A and B, under Chapter 5. Subchapter A, concerning federal and intergovernmental coordination, will contain the following undesignated heads: Adoption of Federal Laws, Interagency Council on Natural Resources and Environment, Policy for the Environment, Interagency Transportation Council, Metropolitan Planning Organizations, Water Resource Conservation, State Planning Assistance Grants, Interagency Health and Human Resources Council, State Manpower Services Council (SMSC), and Intrastate Allocation Procedures for Federal Coastal Energy Impact Program Assistance. Subchap-

ter B, concerning state and local review of federal and state assistance applications, will contain the following undesignated heads: Introduction and General Provisions, Responsibilities of Review Participants, Review Procedures, Accommodation of Review Comments, and Transition Schedule.

The new sections proposed under Subchapter B are in response to presidential Executive Order (E.O.) 12372, as amended by E.O. 12416, which rescinded, effective September 30, 1983, Office of Management and Budget (OMB) Circular A-95. Under E.O. 12372, concerning intergovernmental review of federal programs, states are given authority to establish state wide review and comment processes to replace procedures formerly required by OMB Circular A-95. Since OMB Circular A-95 is incorporated by reference in the rules cited previously, the review and comment procedures formerly required by A-95 will continue in full force and effect until modified or repealed by the final rules of the Texas Review and Comment System.

The proposed new rules governing review and comment on federal and state assistance requests and direct development build upon those aspects of the A-95 review and coordination process that have proven useful and effective since its inception in 1969. However, the new procedures are expected to significantly improve the review process by reducing the regulatory burden on applicants and review agencies and by increasing the effectiveness of reviews through uniform criteria and improved funding agency accountability.

The Texas Review and Comment System (TRACS) was developed in consultation with representatives

of state agencies, local government, and regional councils of governments within the guidelines of E.O. 12372, as amended, and pursuant to the specific programmatic requirements and constraints of the implementing federal regulations of June 24, 1983. Under TRACS, the 24 Texas regional councils of governments are the designated regional review agencies (RRAs) within their respective state planning regions. As the RRAs, they will serve as the primary contact points for local applicants and will provide the mechanism for gathering and disseminating local elected officials' comments on proposed federal or state development and applications for federal and state assistance under covered programs. The Office of the Governor will serve as the statewide review agency and as the State Single Point of Contact (SPOC) under E.O. 12372.

William C. Hamilton, the governor's budget director, has determined that for the first five-year period the repeal and new rules will be in effect there will be no fiscal implications for state or local government as a result of the repeal and enforcing or administering the new rules. Potentially, administrative and compliance costs will decrease, due to a reduction in the number of reviews and simplification of review procedures.

Mr. Hamilton also has determined that for each year of the first five years the repeal and new rules as proposed are in effect the public benefit anticipated as a result of enforcing the repeal and new rules as proposed will be encouragement of more effective expenditure of public funds and reduction of duplication of services and facilities, and will lead to improved responsiveness from federal and state funding sources.

The anticipated economic cost to individuals required to comply with the rules as proposed are expected to remain about the same as existing costs under the A-95 process or possibly decline slightly as a result of simplifying the review process.

Written comments on the proposal may be submitted to Leon Willhite, Governor's State Planning Division, P.O. Box 13561, Austin, Texas 78711, for a period of 30 days following publication.

State Review of Federal Grant Assistance Applications

1 TAC §§5.11-5.14

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the Office of the Governor, P.O. Box 12428, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeals are proposed under Texas Civil Statutes, Article 4413(32a) and 1011m. Under Article 4413(32a), the governor, as chief planning officer, is empowered to provide for the review of state plans and applications for federal grant or loan assistance and to establish policies and guidelines for review and

comment. Article 1011m requires applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commission (regional council of governments) and directs the governor to issue guidelines for carrying out such reviews.

In addition, E.O. 12372, as amended, cites the Demonstration Cities and Metropolitan Development Act of 1966, §204 (42 United States Code §3334), and the Intergovernmental Cooperation Act of 1968, §401(a) (42 United States Code §4231(a)). Section 204 requires that applications for federal assistance in planning or constructing a wide range of public facilities be submitted for review to areawide review agencies in metropolitan areas. Section 401(a) directs the President to prescribe regulations governing formulation, evaluation, and the review of federal programs having a significant impact on area and community development and requires that all national, regional, state, and local viewpoints be considered in planning or carrying out federal programs or projects or federally-assisted activities. Review of projects with potentially adverse impacts on the environment are authorized by the National Environmental Policy Act of 1969, §102(2)(C) (42 United States Code §4332(2)(C)).

§5.11. *Agencies Covered.*

§5.12. *Applications Covered by OMB Circular A-95.*

§5.13. *Other Applications.*

§5.14. *Appendices.*

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

Issued in Austin, Texas, on September 30, 1983.

TRD-837772 Larry J. Craddock
Assistant General Counsel
Office of the Governor

Proposed date of adoption:
December 1, 1983

For further information, please call (512) 475-3901.

Subchapter B. State and Local Review of Federal and State Assistance Applications

Introduction and General Provisions

1 TAC §§5.191-5.196

The new rules are proposed under Texas Civil Statutes, Article 4413(32a) and 1011m. Under Article 4413(32a), the governor, as chief planning officer, is empowered to provide for the review of state plans and applications for federal grant or loan assistance and to establish policies and guidelines for review and comment. Article 1011m requires applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commission (regional council of governments) and directs the governor to issue guidelines for carrying out such reviews.

In addition, Executive Order (E.O.) 12372, as amended, cites the Demonstration Cities and Metropolitan Development Act of 1966, §204 (42 United States Code §3334), and the Intergovernmental Cooperation Act of 1968, §401(a) (42 United States Code §4231(a)). Section 204 requires that applications for federal assistance in planning or constructing a wide range of public facilities be submitted for review to areawide review agencies in metropolitan areas. Section 401(a) directs the President to prescribe regulations governing formulation, evaluation, and the review of federal programs having a significant impact on area and community development and requires that all national, regional, state, and local viewpoints be considered in planning or carrying out federal programs or projects or federally-assisted activities. Review of projects with potentially adverse impacts on the environment are authorized by the National Environmental Policy Act of 1969, §102(2)(C) (42 United States Code 4332(2)(C)).

§5.191. Introduction and Purpose. The purpose of this rule is to establish a statewide system that provides state and local officials opportunities to review and to comment upon federal or state direct development, applications for federal or state financial assistance, and environmental impact statements related to projects or programs that affect their jurisdiction before the proposals are approved or funded. Comments made during the review process are for the applicant's use in improving the project, if necessary, and for the funding agency's use in deciding whether to approve the application. The rule designates the regional review agencies and the state single point of contact, lists the programs for which reviews will be required, delineates the respective responsibilities of applicants, state agencies, and review agencies, establishes uniform review procedures and criteria, and describes procedures for seeking accommodation of review comments. This rule specifically incorporates by reference Executive Order 12372, as amended by Executive Order 12416, the Demonstration Cities and Metropolitan Development Act of 1966, §204 (42 United States Code §3334); the Intergovernmental Cooperation Act of 1968, §401(a) (42 United States Code §4231(a)); and the National Environmental Policy Act of 1969, §102(2)(C) (42 United States Code §4332(2)(C)).

§5.192. Applicability. This rule applies to all review agencies, applicants for state or federal assistance, state and federal agencies proposing or carrying out direct development, and state and federal agencies providing financial or other assistance, unless specifically exempted by state or federal law.

§5.193. Goals. Major goals of the Texas Review and Comment System (TRACS) include:

- (1) providing opportunities for intergovernmental consultation on applications, with a view toward strengthening proposals before they are submitted to the appropriate federal or state agency for approval;
- (2) fostering intergovernmental cooperation and coordination;
- (3) discouraging unnecessary duplication;

- (4) providing a mechanism for the timely exchange of information among the various levels of government on proposals potentially affecting them; and

- (5) providing public agencies responsible for enforcing or furthering civil rights laws with an opportunity to participate in the review process.

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

Accommodation—The process by which the governor, a state agency, the governing body of a regional review agency, or a local government which disagrees with the regional review agency's review recommendation may request a federal or state funding or implementing agency not to fund or carry out a project. The funding or implementing agency must respond in writing and may concur with the request, explain why it is implementing its decision over the objections(s), or reach a mutually acceptable solution.

Application—

(A) A proposal to a federal or state agency requesting financial assistance;

(B) a proposal by a federal or state agency to directly develop a project or to directly administer a program; or

(C) an environmental impact assessment or statement related to subparagraph (A) or (B).

Covered program—Any state or federal direct development activity or assistance program subject to review under TRACS. Covered federal programs are listed in §5.195(b) of this title (relating to Program Coverage); state programs subject to review are contained in §5.195(d).

Direct federal or state development—Planning and construction of public works, physical facilities, and installations or land and real property development (including the acquisition, use, and disposal of real property) undertaken by or for the use of the federal government or the State of Texas or any of their respective agencies; or the leasing of real property for federal or state use where the use or intensity of use of such property will be substantially altered.

Executive Order (E.O.) 12372; Executive Order 12372, as amended; or executive order—The Presidential executive order issued July 14, 1982, rescinding Office of Management and Budget Circular A-95 and providing states an opportunity to structure, in consultation with local officials, their own intergovernmental review and comment procedures. The executive order requires federal agencies to accept state or local views or explain why not. It also allows states to simplify, substitute, or consolidate plans required of the state by federal agencies.

Federal agency—Any department, agency, or instrumentality in the executive branch of the U.S. Government and any wholly owned U.S. Government corporation.

Federal assistance or federally-assisted programs—Programs that provide assistance through grant or contractual arrangements, including technical assistance programs, loans, loan guarantees, or insurance.

Funding agency—The federal or state agency responsible for final approval of an application for assistance.

Jurisdiction—

(A) The geographic area over which a governmental unit exercises authority; or

(B) the authority of a unit of government to exercise certain powers.

Local government—Any Texas city, town, or county.

OMB Circular A-95—The federal circular issued in 1969 that prescribed procedures for state and local review and comment on specific federal assistance programs. Executive Order 12372, as amended by E.O. 12416, rescinded OMB Circular A-95 on September 30, 1983.

Regional review agency (RRA)—One of the 24 Texas regional councils of governments, which are the designated regional review agencies under the Texas Review and Comment System for their respective state planning regions. Each council of governments is responsible under Texas Civil Statutes, Article 1011m, and these rules for conducting reviews of applications which affect its state planning region.

SAI—The state application identifier number assigned to an application by a review agency to facilitate tracking and reporting and to verify that an application has been submitted to the appropriate review agency.

Standard Form 424 or SF424—The standard cover sheet required by federal funding agencies.

State—The State of Texas or any of its agencies or instrumentalities with statewide jurisdiction.

State planning region—One of 24 contiguous, multicounty geographic areas of the state designated by the governor.

State single point of contact (SPOC)—The only entity under the Texas Review and Comment System (TRACS) authorized to transmit an accommodation request and to receive the funding or implementing agency's response for subsequent dissemination to the governmental entity seeking accommodation. Under TRACS, the SPOC is the governor's office.

Threshold criteria—The criteria used by a review agency to determine whether an application is subject to or requires review.

TRACS—The Texas Review and Comment System, which replaces and revises review and comment procedures on federal programs previously authorized by OMB Circular A-95. Certain state programs are also included under TRACS, pursuant to state law.

§5.195. Program Coverage.

(a) Federal program coverage under TRACS is constrained by the dictates of E.O. 12372, which stipulates the list of programs from which states may select. In addition, federal statutes, particularly the Demonstration Cities and Metropolitan Development Act of 1966, §204, the Intergovernmental Cooperation Act of 1968, §401(a), and the National Environmental Policy Act of 1969, §102(2)(C), mandate certain programs for review.

(b) Programs proposed for review under TRACS pursuant to these laws, plus selected other activities, including all direct federal development, are adopted by reference in Table I. Copies of Table I may be obtained from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

TABLE I

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AGRICULTURE

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(Selection is limited to proposals which (a) require an Environmental Impact Statement (EIS); or (b) do not require an EIS but will be newly initiated at a particular site and require unusual measures to limit the possibility of adverse exposure or hazard to the general public; or (c) have a unique geographic focus and are directly relevant to the governmental responsibilities of a state or local government within that geographic area.)

<p>Air Pollution Control Research Grants</p>	<p>66.501</p>
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<p>Pesticides Control Research Grants</p>	<p>66.502</p>
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<p>Solid Waste Disposal Research Grants</p>	<p>66.504</p>
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<p>Water Pollution Control-- Research, Development, and Demonstration Grants*</p>	<p>66.505</p>
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<p>Safe Drinking Water Research and Demonstration Grants*</p>	<p>66.506</p>
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<p>Toxic Substances Research Grants*</p>	<p>66.507</p>
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**Direct Development
Activities**

<p>Real Property Acquisition or Disposition, Including Obtaining Major Leases or Easements*</p>	<p>none</p>
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<p>Construction of New EPA Facilities*</p>	<p>none</p>
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<p>EPA Issued Plans and Permits Which Do Not Impact Interstate Areas*</p>	<p>none</p>
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**FEDERAL EMERGENCY
MANAGEMENT AGENCY**

<p>Emergency Management Assistance</p>	<p>83.503</p>
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<p>Population Protection Planning</p>	<p>83.514</p>
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<p>State and Local Maintenance and Services</p>	<p>83.504</p>
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<p>State and Local Warning and Communications</p>	<p>83.513</p>
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<p>State and Local Emergency Operating Centers</p>	<p>83.512</p>
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<p>The State assistance program under the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, 42 U.S.C. 4001, et seq</p>	<p>83.501</p>
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FEMA

Disaster preparedness grants	83.505
Earthquake and hurricane preparedness planning grants	83.506
Grants, loans, or other financial assistance under secs. 402 and 414 of the Disaster Relief Act of 1974, as amended, 42 U.S.C. 5172, 5184	83.516
State fire incident reporting assistance under Federal Fire Prevention and Control Act	83.407

GENERAL SERVICES
ADMINISTRATION

Lease Construction Projects 41 CFR 101-18.100(e)	none
Intergovernmental Consultation on Federal Projects 41 CFR 101-10.100	none
Disposals to Public Agencies	39.002

DEPARTMENT OF HEALTH
AND HUMAN SERVICES

Family Planning Projects	13.217
Community Health Centers	13.224
Migrant Health Centers Grants	13.246
National Health Service Corps	13.258
Family Planning Services	13.260
State Health Planning and Development Agencies	13.293
Health Systems Agencies	13.294
Head Start	13.600
Runaway Youth	13.623
Child Abuse	13.628
Developmental Disabilities-- Basic Support and Advocacy Grants	13.630
Developmental Disabilities-- Special Projects	13.631

HHS

Aging--Title III A & B--
Grants for Supportive Services
and Senior Centers 13.633

Aging, Title III C--
Nutrition 13.635

Child Welfare Services--
State Grants 13.645

WIN 13.646

Venereal Disease 13.977

Health Programs for Refugees 13.987

National Health Promotion Training
Network 13.990

Adolescent Family Life
Demonstration Program 13.995

Cuban-Haitian Special Placement none

Refugee Assistance Targeted
Assistance Grants to States none

Entrant Assistance Targeted
Assistance Grants to States none

DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
Insured Housing

(An application under
these programs is
subject to review if
it involves insurance
of advances for the
construction or sub-
stantial rehabilita-
tion of a project
containing 200 or more
units in an urbanized
area or more units in
a nonurbanized area.
There are no
thresholds for
applications under
CFDA No. 14.125.)

Mortgage Insurance--
Construction or Substantial
Rehabilitation of Condominium
Projects 14.112

Mortgage Insurance--
Development of Sales Type
Cooperative Projects 14.115

Mortgage Insurance--
Investor Sponsored Cooperative
Housing 14.124

Mortgage Insurance--
Land Development and New
Communities 14.125

Mortgage Insurance--
Management Type Cooperative Projects 14.126

HUD	<p>Mortgage Insurance-- Manufactured (Mobile) Home Parks 14.127</p> <p>Mortgage Insurance-- Rental Housing 14.134</p> <p>Mortgage Insurance-- Rental Housing for Moderate Income Families 14.135</p> <p>Mortgage Insurance-- Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate 14.137</p> <p>Mortgage Insurance-- Rental Housing for the Elderly 14.138</p> <p>Mortgage Insurance-- Rental Urban Renewal 14.139</p> <p>Supplemental Loan Insurance-- Multifamily Rental Housing 14.151</p>
Assisted Housing	<p>Low Income Housing-- Assistance Program 14.146</p> <p>Low Income Housing-- Homeownership Opportunities for Low Income Families 14.147</p> <p>Low Income Housing Assistance Program 14.156</p> <p>Housing for the Elderly or Handicapped 14.157</p> <p>Public Housing-- Comprehensive Improvement Assistance Program 14.158</p> <p>Congregate Housing Services Program 14.170</p>

(An application under CFDA Nos. 14.146, .147, or .156 is subject to Part 52 procedures if it involves the construction or substantial rehabilitation of a project containing 50 or more units in an urbanized area or 25 or more units in a nonurbanized area. An application under CDFA No. 14.157 is subject to Part 52 procedures if it involves the construction or substantial rehabilitation of a project containing 200 or more units in an urbanized area or 50 or more units in a nonurbanized area.)

HUD
Community Planning and
Development

(Only those portions of final statements under CFDA No. 14.218 that consist of planning or construction of a water or sewage facility in a metropolitan area are subject to Part 52 procedures. HUD may be unable to accommodate state process recommendations concerning particular activities since HUD has only limited authority to refuse to fund an eligible activity.)

Community Development Block Grants/
Entitlement Grants* 14.218

Urban Development Action Grants* 14.221

Fair Housing and Equal
Opportunity
(Only competitive funding
applications are subject
to review under 14.401.)

Fair Housing Assistance Program 14.401

Miscellaneous Programs

(An application under CFDA No. 14.211 is subject to Part 52 procedures if it involves the construction or rehabilitation of a project containing 200 or more units in an urbanized area or 50 or more units in a nonurbanized area unless assistance is to be provided under an assisted housing program with 50 and 25 unit thresholds in which case the lower thresholds apply.)

Housing Counseling Program 14.169

Surplus Land for Low and Moderate
Income Housing 14.211

DEPARTMENT OF THE INTERIOR

Historic Preservation --
Grants-in-Aid 15.904

Outdoor Recreation --
Acquisition, Development and
Planning (Land and Water
Conservation Fund Grants) 15.916

INTERIOR

Urban Park and Recreation Recovery Program	15.919
Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining	15.250
Abandoned Mine Land Reclamation Program	15.252
Endangered Species Conservation	15.612
Atmospheric Water Resources Management Program Research	none
Irrigation Distribution System Loans	15.501
Irrigation Systems Rehabilitation and Betterment	15.502
Small Reclamation Projects	15.503

DEPARTMENT OF JUSTICE

Bureau of Prisons-- Construction projects such as correctional institutions and detention centers	none
Immigration and Naturalization Service--Construction projects such as border patrol stations	none
Office of Juvenile Justice and Delinquency Prevention-- Formula Grant Program	16.540
Office of Juvenile Justice and Delinquency Prevention-- Special Emphasis and Technical Assistance Grants, except grants to nongovernmental entities	16.541
Office of Justice Assistance, Research, and Statistics-- Categorical Grants for Crime Prevention and Criminal Justice Improvement	none

DEPARTMENT OF LABOR

Work Incentive Program, Stat: Sections 432(d), (e) and (f) of Pub. L. 92-223	none
Senior Community Service Employment Program, Stat: Pub. L. 95-478	none
Job Corps, Stat: Section 435, Pub. L. 97-300	none
Migrant and Seasonal Farmworkers Program, Stat: Section 402(d) of Pub. L. 97-300	none
Job Training Partnership Act, Stat: Pub. L. 97-300	none
Employment Service, Stat: Section 501 of Pub. L. 97-300	none
Disabled Veteran's Outreach program, Stat: 38 U.S.C. 2003A	none

NATIONAL ENDOWMENT FOR
THE ARTS

Promotion of the Arts State Programs/Office for Public Partnership (Basic State Grants)	none
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NATIONAL SCIENCE FOUNDATION

Intergovernmental Science and Technology Programs,	47.036
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SMALL BUSINESS
ADMINISTRATION

Small Business Development Center program	none
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DEPARTMENT OF TRANSPORTATION
FHWA

Highway Construction, Research and Construction*	20.205
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DEPARTMENT OF TRANSPORTATION
UMTA

Section 3 Discretionary Capital Grants*	20.500
Section 4(i) Innovative Techniques Program*	NA

DOT	Section 5 Formula Grant Program*	20.507
	Section 6 Research, Development and Demonstration Grant Program*	20.504 20.506 20.510
	Section 8 Planning and Technical Studies*	20.505
	Section 9 Block Grant Program*	NA
	Section 16 Grants to Meet Special Needs of Elderly and Handicapped Persons*	NA
	Section 18 Formula Grant Program for Non-Urbanized Areas*	20.509
DEPARTMENT OF TRANSPORTATION FRA	Local Rail Service Assistance Program*	NA
DEPARTMENT OF TRANSPORTATION FAA	Airport Development Aid Program*	20.102
	Airport Improvement Program*	20.106
DEPARTMENT OF TRANSPORTATION MARAD	Development and Promotion of Ports and Intermodal Transportation	20.801
DEPARTMENT OF TRANSPORTATION RSPA	Natural Gas Pipeline Safety Grants	20.700
ALL FEDERAL AGENCIES	All direct federal development not specifically excluded by law from review.	NA

*Programs covered by Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334).

(c) Federal programs proposed to be excluded from review under TRACS are adopted by reference in Table II. Copies of Table II may be obtained from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

TABLE II

<u>AGENCY</u>	<u>PROGRAM NAME</u>	<u>CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER</u>
ACTION	Service Learning Programs: National Center for Service Learning (NCSL); Young Volunteers in Action (YVA).	72.005
	State Office of Voluntary Citizen Participation (S/OVCP).	72.001
DEPARTMENT OF AGRICULTURE		
FARMERS HOME ADMINISTRATION	Watershed Loans and Advances	10.419
	Technical and Supervisory Assistance Grants	10.431
FOOD SAFETY AND INSPECTION SERVICE	Cooperative Meat and Poultry Inspection Program (wholesale meat, poultry and Talmadge-Aiken)	10.475
FOOD AND NUTRITION SERVICE	Food Processing	10.550
	Food Distribution Program on Indian Reservations	10.550
	State Administrative Expenses for Child Nutrition	10.560
	State Administrative Matching Grants for Food Stamp Program	10.561
FOREST SERVICE	National Forest Systems Land Management Practices which Involve Direct Development Activities	-----
RURAL ELECTRIFICATION ADMINISTRATION	Rural Electrification Loans and	10.850

REA	Loan Guarantees to Governmental Entities	
	Rural Telephone Loans and Loan Guarantees to Governmental Entities	10.851
DEPARTMENT OF THE ARMY	Aquatic Plant Control	12.100
	Planning Assistance to States	12.110
	Floodplain Management Services Program	12.104
DEPARTMENT OF COMMERCE	Anadromous and Great Lake Fisheries Conservation (except for research projects involving nongovernmental entities)	11.405
	Sea Grant Support (state and local government applicants)	11.417
	Intergovernmental Climate Program	11.428
DEPARTMENT OF EDUCATION	Title IV of the Civil Rights Act	84.004
	Handicapped Early Childhood Assistance	84.024
	Handicapped Innovative Programs--Deaf Blind-Centers	84.025
	Handicapped Media Services and Captioned Films	84.026
	Handicapped Regional Resource Centers	84.028
	Handicapped Teacher Recruitment and Information	84.030
	Interlibrary Cooperation	84.035
	Vocational Education--State Advisory Councils	84.053

EDUCATION

Indian Education-- 84.060
Entitlement Grants to Local
Educational Agencies and Tribal
Schools

Regional Education Programs for 84.078
Deaf and Other Handicapped persons

Women's Education Equity 84.083

Strengthening Research Library 84.091
Resources

Bilingual Vocational Instructor 84.099
Training

Bilingual Vocational Instructional 84.100
Materials, Methods, and Techniques

College Housing Loans 84.142

Federal Real Property 84.145
Assistance Program

The following programs authorized 84.151
by Subchapter D of Chapter 2 of
the Education Consolidation and
Improvement Act

National Diffusion Network 84.073
Program, Law Related Education
Program, Inexpensive Book
Distribution Program, Arts in
Education Program, Alcohol and Drug
Abuse Program

DEPARTMENT OF ENERGY

Electric and Hybrid Vehicle Loan 81.060
Guarantees

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Immunization 13.268

Surplus Property Utilization 13.676

Black Lung Clinics 13.965

Venereal Disease Research, 13.978
Demonstration and Public
Information and Education Grants

HHS	Eye Research-Construction	13.985
	Cooperative Agreements for State-Based Diabetes Control Programs	13.988
DEPARTMENT OF INTERIOR	Andromous Fish Conservation 16 U.S.C. 757a-757g	15.600
	Fish Restoration-- 16 U.S.C. 777-777k	15.605
	Wildlife Restoration-- 16 U.S.C. 669-699i	15.611
	Marine Mammal Grants-- 16 U.S.C. 1361 et seq.	15.613
	Fish and Wildlife Conservation Act 16 U.S.C. 2901 et seq.	
DEPARTMENT OF JUSTICE	U.S. Marshals Service-- Cooperative Agreement Program	none
	Bureau of Justice Statistics-- Criminal Justice Statistics Development Grants	16.550
	National Institute of Corrections-- Technical Assistance Grants, except contracts to individuals for specialized assistance	16.603
DEPARTMENT OF TRANSPORTATION		
FHWA	Highway Beautification (Control of Junkyards and Outdoor Advertising).	20.214
UMTA	Section 10 Managerial Training Grants	20.503
	Section 11 University Research and Training Grants	-----
USCG	Boating Safety Program	20.001
	Cooperative Marine Sciences Program	20.002

TRANSPORTATION State Boating Safety Financial Assistance Program -----

FEDERAL EMERGENCY MANAGEMENT AGENCY Shelter Surveys 83.509

State Radiological Defense Officers 83.511

Radiological Systems Maintenance 83.508

Emergency Management Training 83.403

Acquisition of flood damaged structures under sec. 1362 of the National Flood Insurance Act of 1968 as amended. 83.502
42 U.S.C. 4103

GENERAL SERVICES ADMINISTRATION

Records Management 41 CFR 105-65.203 State Records Program Organization

NATIONAL ENDOWMENT FOR THE ARTS

Promotion of the Arts Artists-In-Education -----

Test Program of Support for Local Arts Agencies -----

NATIONAL SCIENCE FOUNDATION

Materials Development for Precollege Science and Mathematics -----

Honors Workshops for Precollege Teachers of Science and Mathematics -----

(d) The state programs proposed for review under TRACS are adopted by reference in Table III. These exclude programs that are noncompetitive in nature or which involve grants or loans to individuals. Copies may be obtained from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

TABLE III

<u>AGENCY</u>	<u>PROGRAM NAME</u>	<u>CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER</u>
AERONAUTICS COMMISSION	Airport Construction	none
COMMISSION ON ALCOHOLISM	ADM block grant; State funds for community-based services	none
COMMISSION ON THE ARTS	Financial Assistance	none
DEPARTMENT OF HIGHWAYS & PUBLIC TRANSPORTATION	Highway Construction, Research & Planning	20.205
	Highway Beautification	20.214
	Urban Mass Transportation Capital Improvement	20.500
	Urban Mass Transportation Capital & Operating Assistance Formula Grants	20.507
	Urban Mass Transportation Technical Studies Grants	20.505
	Mass Transit Account Formula Distribution	-----
	Public Transportation for Nonurbanized Areas	-----
	Section 9 Block Grant Program	-----
EDUCATION AGENCY	Statewide Program for Visually Handicapped	none

TEA	Regional Day Schools for the Deaf	none
	Educational Television	none
	Gifted and Talented	none
	School Bus Safety Education	none
	Industrial Start-up Training	none
	Apprenticeship Training	none
	Texas Assessment of Basic Skills	none
	School Community Guidance Centers	none
REHABILITATION COMMISSION	Rehabilitation Services - Basic Support	84.126
	Client Assistance Projects	84.128f
	Migatory Worker Vocational Rehabilitation Service Projects	84.128g
	Centers for Independent Living	84.132
	Developmental Disabilities -- Basic Support & Advocacy Grants	13.630
	Developmental Disabilities -- Special Projects	13.631
STATE COMMISSION FOR THE BLIND	Vocational Rehabilitation Services	84.126
TEXAS ECONOMIC DEVELOPMENT COMMISSION	Minority Business Development	11.800
	International Trade Outreach Program (INTOP)	11.303
TEXAS PARKS & WILDLIFE	Hunter Education Shooting Range Program	none
	Land and Water Conservation Fund Program	15.916

TEXAS PARKS AND WILDLIFE	Texas Local Parks, Recreation & Open Space Fund Program	none
	Urban Parks and Recreation Recovery Program (UPARR)	15.919
TEXAS STATE LIBRARY	Public Library Construction	84.154
	Library Systems Act	none
	Public Library Service	84.034
	Interlibrary Cooperation	84.035

ALL STATE AGENCIES: All direct State development that meets TRACS threshold criteria and is not specifically excluded by law from review.

(e) State programs proposed to be excluded from review under TRACS are adopted by reference in Table IV. Copies of Table IV may be obtained from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

TABLE IV

<u>AGENCY</u>	<u>PROGRAM NAME</u>	<u>CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER</u>
DEPARTMENT OF HEALTH	Rape Prevention and Crisis Service	none
	Home Health Services	none
	Health Incentive (314d)	none
	Health Education/Risk Reduction	none
	Maternal and Child Health Services	none
	Early Childhood Intervention	none
	Fluoridation Program	none
HISTORICAL COMMISSION	Museum Grants	none

HISTORICAL COMMISSION	Historic Preservation Grant-in-Aid	15.904
	Texas Historic Preservation Grants	none
MENTAL HEALTH AND MENTAL RETARDATION	Mental Health portion of ADM Block	13.992
	State Grants-in-Aid	none
	Demonstration project for persons who are autistic	none
TEXAS PARKS AND WILDLIFE DEPARTMENT	State Boat Ramp Program	none
	State Beach Cleaning Program	none
TEXAS DEPARTMENT OF WATER RESOURCES	Texas Research and Flood Control Planning Program	none

(f) For federal programs and activities not selected for coverage under TRACS, the relevant federal agency will, under federal rules, notify the State of Texas, regional review agencies, and local governments of proposed federal actions affecting them. The notice will provide an opportunity for review and comment within a time period similar to that provided for selected programs.

(g) Any additions to or deletions from the list of covered federal and state programs will be made in consultation with local and state officials through publication in the *Texas Register* and by other appropriate means.

§5.196. State Plan Simplification, Substitution, or Consolidation.

(a) Executive Order 12372 allows states, subject to federal approval, to simplify federally required plans, substitute state plans for federally required plans, or consolidate plans.

(b) All state agencies are strongly encouraged to review their plans to identify opportunities to use internal or other state required planning and budget documents in lieu of federally mandated documents; to simplify plans; or to consolidate plans dealing with similar programs or clients.

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

Issued in Austin, Texas, on September 30, 1983

TRD-837767 Larry J. Craddock
Assistant General Counsel
Office of the Governor

Proposed date of adoption
December 1, 1983

For further information, please call (512) 475-3901.

Responsibilities of Review Participants

1 TAC §§5.211-5.217

The new rules are proposed under Texas Civil Statutes, Articles 4413(32a) and 1011m. Under Article 4413(32a), the governor, as chief planning officer, is empowered to provide for the review of state plans and applications for federal grant or loan assistance and to establish policies and guidelines for review and comment. Article 1011m requires applicants for state

or federal assistance to submit their applications for review to the appropriate regional planning commission (regional council of governments) and directs the governor to issue guidelines for carrying out such reviews.

In addition, E. O. 12372, as amended, cites the Demonstration Cities and Metropolitan Development Act of 1966, §204, (42 United States Code §3334), and the Intergovernmental Cooperation Act of 1968,

§401(a), (42 United States Code §4231(a)) Section 204 requires that applications for federal assistance in planning or constructing a wide range of public facilities be submitted for review to areawide review agencies in metropolitan areas. Section 401(a) directs the President to prescribe regulations governing for mulation, evaluation, and the review of federal programs having a significant impact on area and community development and requires that all national, regional, state, and local viewpoints be considered in planning or carrying out federal programs or projects or federally-assisted activities. Review of projects with potentially adverse impacts on the environment are authorized by the National Environmental Policy Act of 1969, §102(2)(C), (42 United States Code §4332(2)(C)).

§5.211. State Single Point of Contact Responsibilities. The state Single Point of Contact shall

(1) provide the primary point of receipt and serve as the review agency or the review coordinator, as appropriate, for state agency programs, plans, projects, or environmental impact statements, for applications with interstate, multiregional, or statewide impact, and for federal or state direct development proposals,

(2) include as attachments to its review letter any written comments received from other jurisdictions, agencies, or parties that differ from the state Single Point of Contact comments (supporting views may be attached at the state Single Point of Contact's discretion),

(3) assign a state application identifier (SAI) number to each notification of intent or application received, following standard procedures,

(4) notify relevant state and substate entities in a timely manner of statewide or interstate applications or direct federal or state development activities affecting their jurisdictions, and solicit comments thereon,

(5) review projects of special significance, at its discretion,

(6) serve as the state's Single Point of Contact for accommodation requests to state and federal agencies and responses therefrom,

(7) serve as liaison with the state Single Points of Contact in contiguous states, as appropriate, on interstate projects and other review issues,

(8) maintain a list of the state Single Points of Contact for contiguous states and provide the list to appropriate regional review agencies,

(9) monitor, and in cooperation with the regional review agencies, state agencies, and local governments, refine the Texas Review and Comment System procedures and program coverage,

(10) solicit from each state agency the name of its intergovernmental review coordinator and, in cooperation with the agencies, maintain a list of such individuals on a continuing basis,

(11) ensure, to the greatest degree practicable, that all reviews under TRACS are conducted in accordance with these rules and that comments are based on law, fact, or regulation, and

(12) provide, as appropriate, TRACS training and policy guidance

§5.212. Regional Review Agency Responsibilities. The regional review agencies shall:

(1) serve as the primary point of contact for applicants with projects wholly within one of their respective state planning regions;

(2) assign a state application identifier (SAI) number to each notification of intent or application received following the format prescribed by the state Single Point of Contact,

(3) review, on the basis of law, fact, or regulation, local and regional programs, projects, plans, or environmental impact statements (EISs);

(4) review state or federal programs, projects, plans, or EISs affecting their respective state planning regions;

(5) include as attachments to their review letter any written comments received from other jurisdictions, agencies, or parties that differ from the regional review agency comments (supporting views may be attached at the RRA's discretion),

(6) transmit, in accordance with standard procedures, project review data to the state Single Point of Contact, and

(7) assist in monitoring and refining the Texas Review and Comment System.

§5.213. Conflict of Interest.

(a) No regional review agency shall review its own application when the RRA is in direct competition with other applicants within its state planning region for the same funding

(b) When the regional review agency falls within the provisions of subsection (a) of this section, it shall transmit its application to affected governments in the project area, with instructions for them to send their comments directly to the state Single Point of Contact

(c) Comments received by the state Single Point of Contact shall be compiled into a review letter that will be transmitted to the funding agency and to the applicant regional review agency

(d) The regional review agency, in its review letter accompanying any competing application(s), shall clearly state its interest as an applicant in the program for which the review was provided

§5.214. Use of Other Public Bodies in the Review Process

(a) Regional review agencies are encouraged to use existing bodies such as metropolitan planning organizations (MPOs) and other specialized groups which can contribute to the review process

(b) Reviews of specified applications or types of applications may be delegated to such bodies by a regional review agency. Any such delegation must be made pursuant to a written agreement between the RRA and the entity to which the delegation of authority is made, and must incorporate by reference the procedures, standards, and criteria set forth in these rules with assurances that reviews will be conducted in conformity with the TRACS rules

(c) All such agreements shall be made and approved in accordance with RRA procedures for similar agreements

(d) Two copies of any document delegating review authority shall be provided to the state Single Point of Contact within five working days following execution of the delegation agreement.

(e) Review comments made under a delegation of authority agreement must receive the formal approval of the RRA's governing body to be an official TRACS review recommendation.

§5.215 Sharing of Application Information Among Review Agencies

(a) Applications or plans of interstate, statewide, or multiregional scope or direct federal or state development proposals submitted to the state Single Point of Contact for review will be summarized and transmitted to the regional review agencies potentially affected by the applications, plans, or proposals. Regional review agencies choosing to review such applications will so notify the applicant and request the number of copies of the application needed for review purposes.

(b) Local or regional applications submitted to a regional review agency for review will be summarized and transmitted to the state Single Point of Contact. If the state Single Point of Contact chooses to review the application it will so notify the applicant, and request the number of copies of the application needed for review purposes. The affected regional review agency will also be notified of the state Single Point of Contact's interest.

5.216 State Agency Responsibilities

(a) State agencies having programs covered under TRACS will develop appropriate procedures for

(1) informing potential applicants for assistance under such programs of TRACS requirements and encouraging early contact between applicants and appropriate review agencies.

(2) assuring that all applications for assistance under covered programs have been submitted to appropriate review agencies prior to their submission to the funding agency. Absence of a state application identifier number on an application will be construed as evidence of nonsubmission of the application to the appropriate review agency(s). Such applications will be returned to the applicant with instructions to fulfill the TRACS requirements.

(3) notifying the appropriate review agency(s) within seven working days of any major action on applications reviewed by such review agency(s). Major actions include awards, rejections, returns for amendment, deferrals, or withdrawals. The standard TRACS cover sheet will be used for this purpose, unless a waiver has been granted by the state Single Point of Contact.

(4) Where a review agency has requested accommodation on an application, the state agency shall respond in accordance with §5.252 of this title (relating to State Accommodation of Local Review Comments).

(5) State agencies submitting applications covered under House Bill 1172, 64th Legislature, must complete and submit one copy of Budget and Planning Of-

fice (BPO) Form 1172 to the state Single Point of Contact. Copies of this form and instructions for completing it may be obtained from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

(6) State agencies submitting applications covered under House Bill 1172, 64th Legislature, must keep a record of the amount of federal loan or grant funds received and transmit this and other related information to the state Single Point of Contact on October 1 after the close of the previous fiscal year. Copies of BPO Form 1173 and detailed instructions are available from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

(b) At the request of the state Single Point of Contact, each state agency shall designate an intergovernmental review coordinator within the agency to:

(1) serve as the agency's review coordinator and as liaison between the agency and the state Single Point of Contact for the review and comment process on state and federal applications and activities;

(2) serve as the liaison for regional review agencies on TRACS questions and problems as they relate to that agency;

(3) attend TRACS training or briefing sessions; and

(4) assist in evaluating the review process and make suggestions on ways to improve the review process and procedures.

§5.217 Applicant Responsibilities. Applicants are strongly encouraged to follow the notification of intent procedures in §5.233 of this title (relating to Notification of Intent) in order to minimize delays and to provide opportunities for resolving any problems at an early stage in the application and review process. Specific duties of the applicant include

(1) providing a copy of their application to the appropriate review agency(s) 60 days prior to submitting a new application to a state or federal funding agency.

(A) Applicants with projects, plans, environmental impact statements, or programs affecting more than one state planning region should send their notification of intent or full application to the state Single Point of Contact as follows: State Single Point of Contact, Office of the Governor, P.O. Box 13561, Austin, Texas 78711.

(B) Applicants with projects, plans, environmental impact statements, or programs that are not expected to have impacts outside a single state planning region should send their notification of intent or full application to the regional review agency for the region in which the project is located. A list of the 24 regional review agencies is adopted by reference in Table V. Copies of Table V may be obtained from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

TABLE V

<u>NAME & ADDRESS</u>	<u>STATE PLANNING REGION NO.</u>	<u>COUNTIES INCLUDED</u>
1. Executive Director Alamo Area Council of Governments 118 Broadway, Suite 400 San Antonio, Texas 78205 (512) 225-5201	18	Atascosa, Bandera, Bexar, Comal, Frio, Gillespie, Guadalupe, Karnes, Kendall, Kerr, Medina, Wilson
2. Executive Director Ark-Tex Council of Governments P. O. Box 5307 Texarkana, Texas 75501 (501) 774-3481	5	Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Miller (Arkansas), Morris, Red River, Titus
3. Executive Director Brazos Valley Develop- ment Council P. O. Drawer 4128 Bryan, Texas 77805-4128 (409) 822-7421	13	Brazos, Burleson, Grimes, Leon, Madison, Robertson, Washington
4. Executive Director Capital Area Planning Council 2520 IH 35 South Suite 100 Austin, Texas 78704 (512) 443-7653	12	Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, Travis, Williamson
5. Executive Director Central Texas Council of Governments P. O. Box 729 Belton, Texas 76513 (817) 939-1803	23	Bell, Coryell, Hamilton, Lampasas, Milam, Mills, San Saba
6. Executive Director Coastal Bend Council of Governments P. O. Box 9909 Corpus Christi, Texas 78408 (512) 883-5743	20	Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio
7. Executive Director Concho Valley Council of Governments P. O. Box 60050 San Angelo, Texas 76906 (915) 944-9666	10	Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Schleicher, Sterling, Sutton, Tom Green

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|---|-----------|---|
| <p>8. Executive Director
Deep East Texas Council
of Governments
272 East Lamar
P. O. Drawer 1170
Jasper, Texas 75951
(409) 384-5704</p> | <p>14</p> | <p>Angelina, Houston, Jasper,
Nacogdoches, Newton, Polk,
Sabine, San Augustine,
San Jacinto, Shelby,
Trinity, Tyler</p> |
| <p>9. Executive Director
East Texas Council of
Governments
3800 Stone Road
Kilgore, Texas 75662
(214) 984-8641</p> | <p>6</p> | <p>Anderson, Camp, Cherokee,
Gregg, Harrison, Henderson,
Marion, Panola, Rains,
Rusk, Smith, Upshur,
Van Zandt, Wood</p> |
| <p>10. Executive Director
Golden Crescent Regional
Planning Commission
P. O. Box 2028
Victoria, Texas 77902
(512) 578-1587</p> | <p>17</p> | <p>Calhoun, DeWitt, Goliad,
Gonzales, Jackson, Lavaca,
Victoria</p> |
| <p>11. Executive Director
Heart of Texas Council
of Governments
320 Franklin Avenue
Waco, Texas 76701
(817) 756-6631</p> | <p>11</p> | <p>Bosque, Falls, Freestone,
Hill, Limestone, McLennan</p> |
| <p>12. Executive Director
Houston-Galveston Area
Council
P. O. Box 22777
Houston, Texas 77227
(713) 627-3200</p> | <p>16</p> | <p>Austin, Brazoria, Chambers,
Colorado, Fort Bend,
Galveston, Harris, Liberty,
Matagorda, Montgomery,
Walker, Wallter, Wharton</p> |
| <p>13. Executive Director
Lower Rio Grande Valley
Development Council
Texas Commerce Bank Bldg.
Suite 207
McAllen, Texas 78501
(512) 682-3481</p> | <p>21</p> | <p>Cameron, Hidalgo, Willacy</p> |
| <p>14. Executive Director
Middle Rio Grande
Development Council
P. O. Box 70206
Carrizo Springs, Texas 78834
(512) 876-3533</p> | <p>24</p> | <p>Dimmit, Edwards, Kinney,
La Salle, Maverick, Real,
Uvalde, Val Verde,
Zavala</p> |
| <p>15. Executive Director
Nortex Regional Planning
Commission
P. O. Box 5144
Wichita Falls, Texas 76307
(817) 322-5281</p> | <p>3</p> | <p>Archer, Baylor, Childress,
Clay, Cottle, Foard,
Hardeman, Jack, Montague,
Wichita, Wilbarger, Young</p> |

**Texas
Register**

- | | | | |
|-----|--|----|---|
| 16. | Executive Director
North Central Texas Council
of Governments
P. O. Drawer COG
Arlington, Texas 76005-5888
(817) 461-3300 | 4 | Collin, Dallas, Denton,
Ellis, Erath, Hood, Hunt,
Johnson, Kaufman, Navarro,
Palo Pinto, Parker, Rockwall,
Sommerwell, Tarrant, Wise |
| 17. | Executive Director
Panhandle Regional
Planning Commission
Suite 200, Briercroft
Savings Building
801 South Jackson
P. O. Box 9257
Amarillo, Texas 79105
(806) 372-3381 | 1 | Armstrong, Briscoe, Carson,
Castro, Collingsworth, Dallam,
Deaf Smith, Donley, Gray,
Hall, Hansford, Hartley,
Hemphill, Hutchinson, Lipscomb,
Moore, Ochiltree, Oldham,
Parmer, Potter, Randall,
Roberts, Sherman, Swisher,
Wheeler |
| 18. | Executive Director
Permian Basin Regional
Planning Commission
P. O. Box 6391
Midland, Texas 79701
(915) 563-1061 | 9 | Andrews, Borden, Crane,
Dawson, Ector, Gaines,
Glasscock, Howard, Loving,
Martin, Midland, Pecos,
Reeves, Terrell, Upton,
Ward, Winkler |
| 19. | Executive Director
South East Texas Regional
Planning Commission
P. O. Drawer 1387
Nederland, Texas 77627
(409) 727-2384 | 15 | Hardin, Jefferson, Orange |
| 20. | Executive Director
South Plains Association
of Governments
P. O. Box 2787
3424 Avenue H
Lubbock, Texas 79408
(806) 762-8721 | 2 | Bailey, Cochran, Crosby,
Dickens, Floyd, Garza,
Hale, Hockley, King,
Lamb, Lubbock, Lynn,
Motley, Terry, Yoakum |
| 21. | Executive Director
South Texas Development
Council
600 South Sandman
P. O. Box 2187
Laredo, Texas 78041-0187
(512) 722-3995 | 19 | Jim Hogg, Starr, Webb,
Zapata |
| 22. | Executive Director
Texoma Regional Planning
Commission
10000 Grayson Drive
Denison, Texas 75020
(214) 786-2955 | 22 | Cooke, Fannin, Grayson |

23. Executive Director
West Central Texas
Council of Governments
P. O. Box 3195
Abilene, Texas 79604
(915) 672-8544

7

Brown, Callahan, Coleman,
Comanche, Eastland, Fisher,
Haskell, Jones, Kent, Knox,
Mitchell, Nolan, Runnels,
Scurry, Shackelford, Stephens,
Stonewall, Taylor,
Throckmorton

24. Executive Director
West Texas Council of
Governments
Two Civic Center Plaza
5th Floor
El Paso, Texas 79999
(915) 541-4681

8

Brewster, Culberson, El Paso,
Hudspeth, Jeff Davis, Presidio

(2) providing a copy of their application to the appropriate review agency(s) at least 30 days in advance of submitting a noncompetitive continuation application to a state or federal funding agency;

(3) providing, upon request, additional copies of their full application to the appropriate review agency(s);

(4) providing complete and accurate information for review;

(5) attaching any comments received from a review agency to the application prior to sending it to the funding agency; and

(6) resubmitting for review any application that has been reviewed but not approved by the funding agency, if the application has been substantially amended or revised to change:

(A) scope of work;

(B) dollar amount;

(C) area of project impact; or

(D) probable environmental impact.

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

Issued in Austin, Texas, on September 30, 1983.

TRD-837768

Larry J. Craddock
Assistant General Counsel
Office of the Governor

Proposed date of adoption:

December 1, 1983

For further information, please call (512) 475-3901.

Review Procedures

1 TAC §§5.231-5.236

The new rules are proposed under Texas Civil Statutes, Articles 4413(32a) and 1011m. Under Article 4413(32a), the governor, as chief planning officer, is empowered to provide for the review of state plans and applications for federal grant or loan assistance and to establish policies and guidelines for review and comment. Article 1011m requires applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commission (regional council of governments) and directs the governor to issue guidelines for carrying out such reviews.

In addition, Executive Order (E.O.) 12372, as amended, cites the Demonstration Cities and Metropolitan Development Act of 1966, § 204 (42 United States Code § 3334), and the Intergovernmental Cooperation Act of 1968, § 401(a) (42 United States Code § 4231(a)). Section 204 requires that applica-

tions for federal assistance in planning or constructing a wide range of public facilities be submitted for review to areawide review agencies in metropolitan areas. Section 401(a) directs the President to prescribe regulations governing formulation, evaluation, and the review of federal programs having a significant impact on area and community development and requires that all national, regional, state, and local viewpoints be considered in planning or carrying out federal programs or projects or federally-assisted activities. Review of projects with potentially adverse impacts on the environment are authorized by the National Environmental Policy Act of 1969, § 102(2)(C) (42 United States Code, § 4332(2)(C)).

§5.231. Review Procedures.

(a) All reviews shall be conducted in conformity with these rules and any other review guidelines and policies issued by the state Single Point of Contact.

(b) The regional review agency (RRA) must ensure, to the greatest degree practicable, that all jurisdictions

which a proposal accepted for review could reasonably be expected to significantly affect are notified and given an adequate opportunity to review it and make comments on it.

(c) Regional review comments and recommendations must be formally adopted by the regional review agency's governing body to constitute an official TRACS review.

§5.232. Review of Projects with Mandated Public Participation. Applicants with projects, plans, or programs that are legislatively or otherwise required to incorporate public participation prior to funding or implementation will coordinate those activities with the review process at the earliest practicable point. Review agencies and governmental applicants are strongly encouraged to conduct reviews and public participation activities in parallel to minimize unnecessary delays, without diminishing elected officials' opportunities to comment on proposals affecting their jurisdictions.

§5.233. Notification of Intent.

(a) An applicant under a covered federal or state program should, at least 60 days prior to the final submission of an application to the federal or state agency from which assistance is sought, submit to the appropriate review agency one copy of a notification of intent

(1) Notifications of intent should be sent to the regional review agency having jurisdiction over the state planning region affected by the proposed project or program. Regional review agency addresses and the counties included in each region are contained in §5.217(a)(2) of this title (relating to Applicant Responsibilities).

(2) State agencies, federal agencies proposing direct development, or applicants with proposals affecting an interstate metropolitan area, the whole state, or more than one state planning region should submit one copy of their notification of intent to the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711.

(3) Notifications of intent for state plans covered by the Texas Review and Comment System must be submitted to the state Single Point of Contact 75 days prior to submittal to the federal funding agency.

(b) Notification of intent content.

(1) The notification of intent for local applicants consists of completing Section I of the Standard Form 424 (SF424). Copies of this form can be obtained from the federal agency to which application is being made.

(2) If the federal or state funding agency does not require a SF424, the applicant should complete Part I of a TRACS cover sheet and submit it to the appropriate review agency as the notification of intent. Copies of this form and detailed instructions are available from the State Single Point of Contact, Governor's Office, P.O. Box 13561, Austin, Texas 78711, or the regional review agencies (see §5.217(a)(2) of this title (relating to Applicant Responsibilities)).

(3) For state agency applicants, the notification of intent will consist of completing Section I of the Standard Form 424 and Budget and Planning Office (BPO) Form 1172. Copies of these forms may be obtained from

the State Single Point of Contact in the Governor's Office, P.O. Box 13561, Austin, Texas 78711.

(4) Federal agency notification of intent for direct development activities will be provided in the manner and format prescribed by federal law or regulation

(c) Review agency action based upon notification of intent. Upon receipt of the notification of intent, the state Single Point of Contact or the appropriate regional review agency will notify the applicant in writing that:

(1) the review agency will not review the application; or

(2) the review agency will review the application and requests a specified number of copies of the full application for review purposes.

(3) If an application is covered solely by House Bill 1172, 64th Legislature, the applicant will be notified only if the state Single Point of Contact wishes to review the application. These applications will only be reviewed if, in the judgment of the state Single Point of Contact, they are of statewide impact and could be strengthened through the comments of reviewing agencies. Grant applications of a technical or specialized nature and others that do not appear to have a significant potential for improvement through the review process will normally not be reviewed.

(4) Irrespective of whether the application is selected for review, the review agency will assign a state application identifier number (SAI) to the application for tracking and reporting purposes.

§5.234. Determining Eligibility for Review. Prior to accepting an application for review, the review agency shall determine whether:

(1) the program under which assistance is sought or direct development is proposed is required by the TRACS rules or other law to be reviewed;

(2) the application contains sufficient detail to allow for review, including information on the scope, geographic, environmental, and programmatic impacts, and applicant eligibility to apply;

(3) the proposal is of statewide or regional significance, including:

(A) whether it is likely to significantly affect more than the applicant or implementing jurisdiction(s) or, in the case of a nongovernmental applicant, whether it is likely to significantly affect jurisdictions other than the one in which the project or program is to be developed or operated;

(B) whether the project has a high probability of significant adverse impacts on the environment; and

(C) whether the project type has a high probability of duplicating existing services or facilities or has a demonstrated need for coordination.

(4) Application of threshold criteria.

(A) A negative answer to paragraph (1) of this section automatically precludes an application from being reviewed, unless the applicant requests that it be.

(B) A negative answer to paragraph (2) of this section will result in the application being returned to the applicant for additional information, thereby delaying the proposal's review, and consequently, its progress toward approval or funding.

(C) An affirmative answer to any of the questions under paragraph (3) of this section will make the application subject to review.

§5.235. Project Review Criteria.

(a) If one or more of the threshold criteria are met and an application is accepted for review, the following questions will guide the review agency:

(1) Does the project comply or furnish reasonable assurances of compliance with applicable federal, state, and local laws, regulations, and ordinances?

(2) Is the project consistent with state, areawide, and/or local planning or does it contribute toward goals or objectives identified at one or more of these governmental levels?

(3) Does the project address a clearly defined need?

(4) Is the project likely to produce any significant adverse effects on the environment?

(5) Are the project's goals identified, specific, measurable, and achievable?

(6) Does the proposal demonstrate a feasible delivery strategy?

(7) Does the project contribute to a balanced delivery of services among political subdivisions covered by the application?

(b) Other review criteria. Regional review agencies may utilize additional review criteria reflective of the unique characteristics and concerns of their regions and of the governments within their regions, provided the criteria are consistent with law, fact, or regulation.

§5.236. Review Schedule.

(a) Applications accepted for review must be reviewed within a maximum of 60 days, unless a shorter period is specified by the federal funding agency.

(b) Applicants may consider the review agency to have waived review if no comments are provided by the end of the review period.

(c) Review agencies shall have as a goal the completion of reviews within 45 days, leaving time for resolving any problems or conflicts identified in the review process.

(d) Certain applications, such as noncompetitive continuation grants and those to the U.S. Department of Housing and Urban Development for specified mortgage insurance programs and for Urban Development Action Grants, must be reviewed within 30 days.

(e) The review period shall commence upon receipt of the full application by the review agency. Full applications will include all information contained in the notification of intent, if such was provided, plus all other information required by the funding agency.

(f) Procedures under review waiver. If the state Single Point of Contact or the regional review agency(s) chooses not to review an application, the applicant should:

(1) for applications for federal assistance, complete Part II of the federal Standard Form 424 (SF 424), attach a copy of the review agency's review waiver letter to it, and transmit the SF424 and letter with the application to the funding agency; or

(2) for applications for state assistance, attach the TRACS cover sheet provided by the review agency(s) to the application, along with such other documentation as the review agency may provide, and transmit the application package to the funding agency

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

Issued in Austin, Texas, on September 30, 1983.

TRD-837769 Larry J. Craddock
Assistant General Counsel
Office of the Governor

Proposed date of adoption.

December 1, 1983

For further information, please call (512) 475-3901.

Accommodation of Review Comments

1 TAC §§5.251-5.253

The new rules are proposed under Texas Civil Statutes, Article 4413(32a) and 1011m. Under Article 4413(32a), the governor, as chief planning officer, is empowered to provide for the review of state plans and applications for federal grant or loan assistance and to establish policies and guidelines for review and comment. Article 1011m requires applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commission (regional council of governments) and directs the governor to issue guidelines for carrying out such reviews.

In addition, E.O. 12372, as amended, cites the Demonstration Cities and Metropolitan Development Act of 1966, §204 (42 United States Code §3334), and the Intergovernmental Cooperation Act of 1968, §401(a) (42 United States Code §4231(a)). Section 204 requires that applications for federal assistance in planning or constructing a wide range of public facilities be submitted for review to areawide review agencies in metropolitan areas. Section 401(a) directs the President to prescribe regulations governing formulation, evaluation, and the review of federal programs having a significant impact on area and community development and requires that all national, regional, state, and local viewpoints be considered in planning or carrying out federal programs or projects or federally-assisted activities. Review of projects with potentially adverse impacts on the environment are authorized by the National Environmental Policy Act of 1969, §102(2)(C) (42 United States Code §4332(2)(C)).

§5.251. Federal Accommodation of Review Comments.

(a) At the direction of the governor, by written request from the administrative head of an affected state agency that can demonstrate a probable adverse impact on programs under the agency's jurisdiction, or at the written request of the governing body of a regional re-

view agency, the state Single Point of Contact shall, in writing, inform the federal agency proposing direct federal development or from which financial assistance is requested that the State of Texas or its political subdivisions have serious objections with regard to the proposal for which funding is sought. This determination can be made irrespective of whether the program or activity was selected for coverage under the Texas Review and Comment System (TRACS). Objections must be based on law, fact, or regulation and may address any aspect of a project or proposal, including environmental concerns, that makes it unacceptable to the government(s) in the project area. Recommendations or objections can represent a consensus of all commenting parties or may reflect a particular view with dissenting opinions. The letter shall specify the title of the project, the applicant's name, the purposes of the grant proposal or direct development, the state application identifier number, and the specific objections to the proposal, with proposed remedies, if applicable. Views which differ from the state or regional recommendation must be included in the letter.

(b) The federal funding agency, as required by law, will respond in writing to the state's accommodation request, concurring with the state's position, stating why it intends to fund the proposal over the objections, or reaching a mutually agreeable solution. As soon as possible, but no later than two working days following receipt of the federal response, the state Single Point of Contact (SPOC) shall transmit the federal response to the originating agency or political subdivision. Within the 10 days from receipt provided by federal rules, during which the federal agency will not fund the proposal in controversy, the SPOC will, at the request of the originating state or substate entity, transmit the originator's written rebuttal to the federal agency in cases in which the federal agency has refused to accommodate.

§5.252. State Accommodation of Local Review Comments.

(a) At the written request of the governing body of a regional review agency (RRA), the state Single Point of Contact shall, in writing, inform the state agency from which financial assistance is requested that the RRA has serious objections to the proposal for which funds are sought or, in the case of direct state development, with regard to a project or program the state proposes to construct or operate. Objections must be based on law, fact, or regulation and may address any aspect of a project or proposal, including environmental concerns, that makes it unacceptable to the government(s) in the project area. Recommendations or objections can represent a consensus of all commenting parties, or may reflect a particular view with dissenting opinions. The request from the RRA shall specify the title of the project, the applicant's name, the purposes of the grant proposal or the direct development, the state application identifier number, and the specific objections to the proposal, with proposed remedies, if applicable. Views which differ from the regional recommendation must be included in the letter.

(b) The state funding agency will respond in writing within 15 days to the regional accommodation request, concurring with the regional position, stating why it in-

tends to fund the proposal over the objections, or reaching a mutually agreeable solution. As soon as possible, but no later than two working days following receipt of the state agency response, the state Single Point of Contact shall transmit the agency's response to the originating regional review agency. Within 10 days from receipt by the regional review agency, during which the agency will not fund the proposal in controversy, the SPOC will, at the request of the originating substate entity, transmit the originator's written rebuttal to the state agency in cases in which the state agency has refused to accommodate.

§5.253. Right of a Dissenting Political Subdivision to Request Accommodation. Any political subdivision of the state which can demonstrate a probable adverse impact on its jurisdiction from a proposed project may, when the regional review agency gives the project a favorable review, request that the review, with dissents, be transmitted to the funding agency by the state Single Point of Contact, thereby initiating the federal or state accommodation process as described in §5.251 of this title (relating to Federal Accommodation of Review Comments) and §5.252 of this title (relating to State Accommodation of Local Review Comments).

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

Issued in Austin, Texas, on September 30, 1983.

TRD-837770 Larry J. Craddock
Assistant General Counsel
Office of the Governor

Proposed date of adoption:
December 1, 1983

For further information, please call (512) 475-3901.

Transition Schedule

1 TAC §5.271

The new rule is proposed under Texas Civil Statutes, Articles 4413(32a) and 1011m. Under Article 4413(32a), the governor, as chief planning officer, is empowered to provide for the review of state plans and applications for federal grant or loan assistance and to establish policies and guidelines for review and comment. Article 1011m requires applicants for state or federal assistance to submit their applications for review to the appropriate regional planning commission (regional council of governments) and directs the governor to issue guidelines for carrying out such reviews.

In addition, E.O. 12372, as amended, cites the Demonstration Cities and Metropolitan Development Act of 1966, §204, (42 United States Code §3334) and the Intergovernmental Cooperation Act of 1968, §401(a), (42 United States Code §4231(a)). Section 204 requires that applications for federal assistance in planning or constructing a wide range of public facilities be submitted for review to areawide review agencies in metropolitan areas. Section 401(a) directs the

President to prescribe regulations governing formulation, evaluation, and the review of federal programs having a significant impact on area and community development and requires that all national, regional, state, and local viewpoints be considered in planning or carrying out federal programs or projects or federally-assisted activities. Review of projects with potentially adverse impacts on the environment are authorized by the National Environmental Policy Act of 1969; § 102(2)(C) (42 United States Code § 4332(2)(C)).

§5.271. Transition From OMB Circular A-95 to TRACS.

(a) Review procedures required by OMB Circular A-95 shall continue in full force and effect through November 30, 1983, or until the official adoption of these rules, whichever is later.

(b) Applications in the process of being reviewed under A-95 procedures as of December 1, 1983, shall continue to follow those procedures through the completion of the review.

(c) All applications submitted for review on or after December 1, 1983, or after the official adoption of these rules, whichever is later, shall be subject to the Texas Review and Comment System rules and procedures.

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

Issued in Austin, Texas, on September 30, 1983

TRD-R37771

Larry J. Craddock
Assistant General Counsel
Office of the Governor

Proposed date of adoption:
December 1, 1983

For further information, please call (512) 475-3901.

This repeal of existing §5.236 will allow substitution of federal standards and Interstate Commerce Commission procedures which will be implemented in a new §5.236

Stephen P. Webb, Transportation Division hearings examiner, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of the repeal

Mr. Webb also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of the repeal will be streamlined state rules and federal standards and expeditious handling of rate change requests. There is no anticipated economic cost to individuals as a result of the repeal

Comments on the proposal may be submitted to Walter Wendlandt, Acting Director, Transportation Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*

This repeal is proposed under Texas Civil Statutes, Article 911a, §4, which provide the Railroad Commission of Texas with the authority to adopt reasonable regulations for the governance of motor bus companies.

§5.236. Rates, Fares, and Charges for Motor Bus Companies

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 October 3, 1983.

TRD-838060

Walter Wendlandt
Acting Director
Transportation Division
Railroad Commission of Texas

Earliest possible date of adoption
November 18, 1983

For further information, please call (512) 445 1186.

**TITLE 16. ECONOMIC
REGULATION**

**Part 1. Railroad Commission of
Texas**

**Chapter 5. Transportation Division
Subchapter M. Motor Bus Companies**

16 TAC §5.236

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Railroad Commission of Texas, 1124 IH 35 South, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Railroad Commission of Texas proposes to repeal existing §5.236, relating to intrastate rates, fares, and charges for interstate motor bus companies. The commission makes no comment on the merits of the proposal.

**Part II. Public Utility Commission of
Texas
Chapter 23. Substantive Rules**

The following proposals submitted by the Public Utility Commission of Texas will be serialized in the October 21, 1983, issue of the *Texas Register*. Proposed date of adoption for the documents is November 18, 1983.

Service
§§23.31-23.38
(repeal)

Certification
§23.31
(new)

Customer Service and Protection
§§23.41-23.48
(new)

Special Rules
§§23.51-23.54, 23.56-23.59
(repeal)
Quality of Service
§§23.61-23.67
(new)

General Rules

16 TAC §§23.1-23.3

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Public Utility Commission of Texas, Suite 450N, 7800 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.

The Public Utility Commission of Texas proposes the repeal of §§23.1-23.3, concerning general rules. The proposed repeal of Chapter 23, and adoption of new Chapter 23, concerning substantive rules, is necessitated by revisions of the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature of the State of Texas, providing for a public utility counsel or counselor and administrative law judges and prescribing their qualifications, powers, and duties; requiring annual audits; requiring certain reports and forecasts by utilities and the commission, providing rules and considerations for approval of building new facilities and for fixing or regulating rate to be allowed or changed by utilities; providing for hearings, relating to rate making procedures by municipalities and appeals; providing for judicial review of proceedings of the utility commission; and, adding special provisions as to the authority and power of the commission over telecommunications utilities. Renumbering, regrouping, and reorganization, as well as revised wording, are proposed to assure clarity and increase specificity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of the repeal.

Ms. Ryan also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and more readable, and thereby more comprehensible, substantive rules. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The repeal is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of

its powers and jurisdiction and in administering the provisions of this Act.

- §23.1. Purpose and Scope of Rules.
- §23.2. Severability Clause.
- §23.3. Definitions.

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 October 6, 1983.

TRD-8378061 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Earliest possible date of adoption:
November 18, 1983

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

The Public Utility Commission of Texas proposes new §§23.1-23.3, concerning general rules. This undesignated head will contain sections on purpose and scope, severability clause, and definitions.

The proposed repeal of Chapter 23, and adoption of new Chapter 23, concerning substantive rules, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature of the State of Texas, providing for a public utility counsel or counselor and administrative law judges and prescribing their qualifications, powers, and duties, requiring annual audits; requiring certain reports and forecasts by utilities and the commission, providing rules and considerations for approval of building new facilities and for fixing or regulating rate to be allowed or changed by utilities; providing for hearings, relating to rate making procedures by municipalities and appeals, providing for judicial review of proceedings of the utility commission; and adding special provisions as to the authority and power of the commission over telecommunications utilities. Renumbering, regrouping, and reorganization, as well as revised wording, are proposed to assure clarity and increase specificity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and more readable and thereby more comprehensible, substantive rules. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission,

7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

§23.1. Purpose and Scope of Rules. This chapter is intended to establish a comprehensive regulatory system to assure rates, operations, and services which are just and reasonable to the consumer and the utilities and to establish the rights and responsibilities of both the utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, creed, sex, or marital status.

§23.2. Severability Clause. The adoption of this chapter will in no way preclude the Public Utility Commission of Texas from altering or amending them in whole or in part, or from requiring any other additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. Furthermore, this chapter will not relieve in any way a utility or customer from any of its duties under the laws of this state or the United States. If any provision of this chapter is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable. This chapter shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person. The commission may make exceptions to this chapter for good cause.

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

Act—The Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c.

Affected person—Any public utility affected by any action of the regulatory authority, any person, partnership, cooperative corporation, corporation, or any combination thereof, whose utility service or rates are affected by any proceeding before the regulatory authority, or any person, partnership, cooperative corporation, corporation, or any combination thereof, that is a competitor of a public utility with respect to any service performed by the utility or that desires to enter into competition.

Affiliated interest—The definition of affiliated interest is that definition given in the Public Utility Regulatory Act, Article 1, §3(i).

Agency—Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions for higher education) which makes rules or determines contested cases.

Allocations—For all utilities, the division of plant, revenues, expenses, taxes, and reserves between states, between municipalities, or between municipalities and unincorporated areas, where such items are used for providing public utility service in a state or municipality or for a municipality and unincorporated areas.

Applicant—Any person, partnership, cooperative corporation, corporation, or any combination thereof requesting affirmative service or action from the utility.

Base rate—The portion of a customer's utility bill which is attributable to a set level of expenses fixed during rate proceedings. This would include a cost factor specifically identified as fuel expense.

Bulletin—The commission's unofficial reporter, published once monthly. Final orders of significant interest are printed in full with headnotes, while less significant material appears as memorandum citations.

Commission—The Public Utility Commission of Texas.

Class of service or customer class—A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate. Classes may be further subdivided into grades denoting quality of service.

Contested proceeding or case—A proceeding including, but not restricted to, rate making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the commission after an opportunity for adjudicative hearing.

Cooperative corporation—Any telephone or electric cooperative corporation organized and operating under the Telephone Cooperative Act (Texas Civil Statutes, Article 1528c) or the Electric Cooperative Corporation Act (Texas Civil Statutes, Article 1528b).

Corporation—Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Public Utility Regulatory Act.

Customer—Any person, firm, partnership, corporation, municipality, cooperative, organization, governmental agency, etc., provided with services by any utility.

Economy energy—Energy produced and supplied from a more economical source by one utility substituted for that being produced or capable of being produced from a less economical source by another utility and scheduled on an availability basis.

Facilities—All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.

Fuel cost recovery 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. The cost of fuel may

include the cost of economy energy, hydroelectric energy, and energy purchased from a qualifying facility.

Hearing—Any proceeding based on an application, petition, complaint, or motion.

License—The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

Licensing—The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license

Municipality—A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

Municipally owned utility—Any utility owned, operated, and controlled by a municipality or by a non-profit corporation whose directors are appointed by one or more municipalities.

Nonrulemaking proceeding—A proceeding other than rulemaking proceeding, and other than proceedings concerning exceptions to rules. This definition includes both contested and uncontested proceedings.

Order—The whole or part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the commission in a matter other than rulemaking but including issuance of "certificates of convenience and necessity" and rate setting.

Party—Each person or agency named or admitted as a party.

Permanent installation—Any installation that is constructed or placed on and permanently affixed to a foundation, and which is, or will be, used or occupied on a permanent full-time basis. A manufactured home or prefabricated structure shall qualify as a permanent installation only if it is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and if it is connected to a permanent water and sewer system.

Person—Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Pleading—A written allegation by the parties of their respective claims. Pleadings may take the form of applications, petitions, protests, exceptions, replies, motions, and/or answers.

Premises—A tract of land or real estate including buildings and other appurtenances thereon.

Proceeding—Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

Public utility—The definition of public utility is that definition given in the Public Utility Regulatory Act, Article 1, §3(c).

Purchased power and/or energy—Electrical power and/or energy purchased from a source outside the utility's system to supply load requirements.

Purchased power and/or energy adjustment factor—A factor, which when multiplied by the number of kilowatt-hours consumed by a customer during a billing period, will produce a purchased power and/or energy adjustment charge to the customer. The total of these charges to all customers is the difference in the cost of power and/or energy purchased by the utility and the component of purchased power and/or energy cost which has been included in the customers' base rates.

Rate—Includes every compensation, tariff, charge, fare, fee, deposit, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity defined in the Public Utility Regulatory Act, Article 1, §3(c), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, fee, deposit, toll, rental, or classification.

Register—The *Texas Register* established by Acts of the 64th Legislature, 1975, cited in Texas Civil Statutes, Article 6252-13a.

Regulatory authority—In accordance with the context where it is found, either the commission or the governing body of any municipality.

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

Rulemaking proceeding—A proceeding to adopt, modify, or interpret a rule as defined in this section, or to adopt, modify, or interpret a statement which has been filed as a rule by the secretary of state.

Separation—For communications utilities only, the division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

Service—Service is used in this chapter in its broadest and most inclusive sense and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under the Public Utility Regulatory Act to their patrons, employees, other public utilities and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

Tariff—The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

Test year—The most recent 12 months for which operating data for a public utility are available, and shall commence with a calendar quarter.

Uncontested proceeding or case—All proceedings other than contested proceedings.

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 October 6, 1983.

TRD-838062 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Earliest possible date of adoption
November 18, 1983

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

Records and Reports

16 TAC §§23.11-23.14

(Editor's note. The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Public Utility Commission of Texas, Suite 450N, 7800 Shoal Creek Boulevard, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Public Utility Commission of Texas proposes the repeal of §§23.11-23.14, concerning records and reports. The proposed repeal of Chapter 23, and adoption of new Chapter 23, concerning substantive rules, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature of the State of Texas, providing for a public utility counsel or counselor and administrative law judges and prescribing their qualifications, powers, and duties, requiring annual audits; requiring certain reports and forecasts by utilities and the commission; providing rules and considerations for approval of building new facilities and for fixing or regulating rate to be allowed or changed by utilities; providing for hearings; relating to rate making procedures by municipalities and appeals; providing for judicial review of proceedings of the utility commission; and adding special provisions as to the authority and power of the commission over telecommunications utilities. Renumbering, regrouping, and reorganization, as well as revised wording, are proposed to assure clarity and increase specificity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of the repeal.

Ms. Ryan also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and more readable and thereby more comprehensible, substantive rules. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757

The repeal is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

§23.11. *General Reports.*

§23.12. *Financial Records and Reports.*

§23.13. *Statistical Reports.*

§23.14. *Maintenance and Location of Records.*

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 October 6, 1983.

TRD-838063 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Earliest possible date of adoption
November 18, 1983

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

The Public Utility Commission of Texas proposes new §§23.11-23.14, concerning records and reports. The undesignated head will contain sections on general reports; financial records and reports; statistical reports; and maintenance and location of records.

The proposed repeal of Chapter 23, and adoption of new Chapter 23, concerning substantive rules, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature of the State of Texas, providing for a public utility counsel or counselor and administrative law judges and prescribing their qualifications, powers, and duties; requiring annual audits; requiring certain reports and forecasts by utilities and the commission; providing rules and considerations for approval of building new facilities and for fixing or regulating rate to be allowed or changed by utilities; providing for hearings; relating to rate making procedures by municipalities and appeals; providing for judicial review of proceedings of the utility commission; and adding special provisions as to the authority and power of the commission over telecommunications utilities. Renumbering, regrouping, and reorganization, as well as revised wording, are proposed to assure clarity and increase specificity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect

the public benefit anticipated as a result of enforcing the rules as proposed will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature 1983, and more readable, and thereby more comprehensible, substantive rules. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, Suite 450N, 7800 Shoal Creek Boulevard, Austin, Texas 78757.

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction and in administering the provisions of this Act.

§23.11. General Reports.

(a) Who shall file. The record keeping, reporting, and filing requirements listed in this section shall apply to all public utilities operating in the State of Texas, excluding municipally owned utilities unless otherwise specified.

(b) Initial reporting. Periodic reporting (quarterly, annual) shall commence with an initial filing, unless otherwise specified in this section, such that:

(1) the initial quarterly report shall reflect the transactions and conditions of the utility for the most recent fiscal quarter ending on or prior to April 30, 1976, and

(2) the initial annual report shall reflect the transactions and conditions of the utility for the most recent fiscal year ending on or prior to April 30, 1976. All initial reports shall, unless otherwise specified in this section, be filed within 60 days after issuance of commission instructions or forms.

(c) Report attestation. All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership, by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation.

(d) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this section:

(1) Monthly reports: 45 days after the end of the reported period.

(2) Quarterly reports: 45 days after the end of the reported period.

(3) Annual reports: 90 days after the end of the reported period.

(4) Special or additional reports: as may be prescribed by the commission.

(e) Fuel cost and use information. Copies of all presently effective and future fuel purchase or sale contracts 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 elec-

tric 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) Relationships with affiliates. Copies of contracts or arrangements between any public utility and any affiliated interest shall be filed with the commission on request. If such contract or arrangement is not in writing, it shall be reduced to writing. The following information shall be reported annually:

(1) All ownership and management relationships between companies or between companies and individuals.

(2) All transactions with affiliates including, but not limited to, payments for costs of any services, or any property, right, or thing, or for interest expense.

(g) Payments and other compensation. An annual report shall be submitted to the commission showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, and all payments for legal, administrative, or legislative matters in Texas or for representation before the Texas legislature or any governmental agency or body.

(h) Other expenditures. An annual report shall be filed with the commission providing the total for each of the following classes of expenditures and detailing each expenditure exceeding \$50:

(1) business gifts and entertainment,
(2) institutional, consumption-inducing, and other advertising expenses,

(3) public relations expenses,

(4) legislative advocacy,

(5) charitable, civic, religious, and political contributions and donations,

(6) all dues or membership fees paid; and

(7) other expenses as deemed appropriate by the commission.

(i) Gross receipts assessment reporting. All utilities subject to the jurisdiction of the commission shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment stipulated in the Act on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Public Utility Regulatory Act, Article XII, §79.

(j) Information omitted from reports. The commission may waive the reporting of any information required in those sections if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission, a written explanation of the omission must be stated in the report.

(k) Special and additional reports. Each utility, including municipally owned utilities, shall report on forms prescribed by the commission special and additional information as requested which relates to the operation of the business of the utility.

(l) **Service quality reports.** Service quality reports shall be submitted quarterly on a form prescribed by the commission.

(m) **Research and development reports.** Research and development reports shall be submitted annually on a form prescribed by the commission.

(n) **Report amendments.** Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission.

(o) **Penalty for refusal to file on time.** In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

(p) **Groundwater withdrawal reports.** Each utility, including municipally owned utilities, which withdraws groundwater from conservation, reclamation, or subsidence districts shall file with the commission a verified or certified copy of the appropriate permit, when applicable, issued by the conservation, reclamation, or subsidence district.

§23.12 Financial Records and Reports

(a) **Uniform System of Accounts.** Every public utility shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions and general instructions pertaining to each Uniform Systems of Accounts as amended from time to time shall be adhered to at all times, unless provided otherwise by these rules, or specifically permitted by the commission.

(1) **Classification.** For the purposes of accounting and reporting to the commission, each public utility shall be classified with respect to its annual operating revenues as follows:

(A) Telephone utilities.

(i) **Class A:** Annual operating revenues exceeding \$250,000.

(ii) **Class B:** Annual operating revenues exceeding \$100,000 but not more than \$250,000.

(iii) **Class C:** Annual operating revenues exceeding \$50,000 but not more than \$100,000.

(iv) **Class D:** Annual operating revenues not exceeding \$50,000.

(B) Electric utilities.

(i) **Class A:** Annual operating revenues exceeding \$2,500,000.

(ii) **Class B:** Annual operating revenues exceeding \$1,000,000 but not more than \$2,500,000.

(iii) **Class C:** Annual operating revenues exceeding \$150,000 but not more than \$1,000,000.

(iv) **Class D:** Annual operating revenues not exceeding \$150,000.

(C) Water and/or sewer utilities.

(i) **Class A:** Annual operating revenues exceeding \$500,000.

(ii) **Class B:** Annual operating revenues exceeding \$250,000 but not more than \$500,000.

(iii) **Class C:** Annual operating revenues exceeding \$50,000 but not more than \$250,000.

(iv) **Class D:** Annual operating revenues not exceeding \$50,000.

(2) **System of accounts.** For the purpose of accounting and reporting to the commission, each public

utility shall maintain its books and records in accordance with the following prescribed Uniform System of Accounts:

(A) Telephone utilities.

(i) **Class A:** Uniform System of Accounts as adopted and amended by the Federal Communications Commission for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(ii) **Class B:** Uniform System of Accounts as adopted and amended by the Federal Communications Commission for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(iii) **Class C:** Uniform System of Accounts as adopted and amended by the Federal Communications Commission for Class C utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(iv) **Class D:** Uniform System of Accounts as adopted and amended by the Federal Communications Commission for Class D utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(B) Electric utilities.

(i) **Class A:** Uniform System of Accounts as adopted and amended by the Federal Power Commission for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(ii) **Class B:** Uniform System of Accounts as adopted and amended by the Federal Power Commission for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(iii) **Class C:** Uniform System of Accounts as adopted and amended by the Federal Power Commission for Class C utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(iv) **Class D:** Uniform System of Accounts as adopted and amended by the Federal Power Commission for Class D utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(C) Water and/or sewer utilities.

(i) **Class A:** Uniform System of Accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class A utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(ii) **Class B:** Uniform System of Accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(iii) **Class C:** Uniform System of Accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(iv) **Class D:** Uniform System of Accounts as adopted and amended by the National Association of

Regulatory Utility Commissioners for Class D utilities or other commission-approved system of accounts as will be adequately informative for all regulatory purposes.

(D) Radio-telephone utilities. Uniform System of Accounts as prescribed or permitted by the commission.

(E) Other system of accounts. When a utility has adopted a Uniform System of Accounts as may be required by a state or federal agency other than those previously mentioned in this section (e.g., United States Department of Agriculture - Rural Electrification Administration), that system of accounts may be adopted by the utility after notification to the commission.

(F) Merchandise accounting. Each utility shall keep separate accounts to show all revenues and expenses resulting from the sale or lease of appliances, fixtures, equipment, directory advertising, or other merchandise.

(3) Accounting period. Each utility shall keep its books on a monthly basis so that for each month all transactions applicable thereto shall be entered in the books of the utility.

(4) Rules related to capitalization of construction costs. In the event construction work in progress is included in rate base pursuant to the rules in §23.21 of this title (relating to Cost of Service), subparagraph (c)(2)(D), capitalization of the following items shall be discontinued to the extent construction work in progress is allowed:

(A) allowance for funds used during construction for electric utilities, and

(B) interest during construction for telephone utilities.

(b) Financial and operating reports. The following financial and operating reports shall be filed with the commission:

(1) Annual reports:

(A) Telephone utilities:

(i) Each Class A and B telephone utility shall file with the commission the same annual report as is required of such utility by the Federal Communications Commission or United States Department of Agriculture - Rural Electrification Administration, and a copy of all correspondence had with respect thereto. Class A and B telephone utilities which are not required to file such reports shall submit to the commission an annual report on the form prescribed by the Federal Communications Commission.

(ii) Each Class C and D telephone utility shall file with the commission the same annual report as is required of such utility by the United States Department of Agriculture - Rural Electrification Administration. Class C and D telephone utilities which are not required to file such report shall file with the commission an annual report on a form prescribed by the commission.

(iii) All telephone utilities filing a consolidated system report with the Federal Communications Commission or operating in the State of Texas and other states shall file a supplemental annual report on a form prescribed by the commission showing the total operation (interstate and intrastate combined) in Texas.

(B) Electric utilities:

(i) Each Class A and B electric utility shall file with the commission the same annual report required

by the Federal Energy Regulatory Commission or United States Department of Agriculture—Rural Electrification Administration and a copy of all correspondence had with respect thereto. Such annual reports shall be filed with the commission on the dates same are required to be filed by the Federal Energy Regulatory Commission or United States Department of Agriculture—Rural Electrification Administration, whichever is applicable. Class A and B electric utilities which are not required to file such reports shall file with the commission an annual report on the form prescribed by the Federal Energy Regulatory Commission.

(ii) Each Class C and D electric utility shall file with the commission the same annual report as is required of such utility by the United States Department of Agriculture—Rural Electrification Administration. Class C and D electric utilities which are not required to file such report shall file with the commission an annual report on a form prescribed by the commission.

(C) Water and/or sewer utilities. All water and sewer utilities shall submit an annual report to the commission on a form prescribed by the commission, or the same annual report as required of such utility by the United States Department of Agriculture, Farmers Home Administration.

(D) Each utility shall submit to the commission two copies of its annual report to shareholders, customers, or members. Each utility or utility holding company subject to annual reporting to the Securities and Exchange Commission shall file a copy of such annual report with the commission.

(2) Quarterly reports. Each utility shall submit to the commission two copies of its quarterly report to shareholders, customers, or members. Each utility or utility holding company subject to quarterly reporting to the Securities and Exchange Commission shall file a copy of such report with the commission.

(3) Other reports. A copy of all filings and related correspondence with the Securities and Exchange Commission shall be submitted to the commission at the time of such filings and correspondence. This would include, but not be limited to, registration statements for sale of new issues of equity or debt securities.

(4) Duplicate information. A utility shall not be required to file with the commission forms or reports which duplicate information already on file with the commission.

(c) Reports on sale of property and mergers.

(1) A public utility shall not sell, acquire, lease, or rent any plant as an operating unit or system in the State of Texas for a total consideration in excess of \$100,000 unless the public utility reports such pending transaction to the commission.

(2) A public utility shall not merge or consolidate with another public utility operating in the State of Texas unless the public utility reports such pending transaction to the commission.

(3) A public utility shall not purchase voting stock in another public utility doing business in the State of Texas, unless the utility reports such pending purchase to the commission.

(4) A public utility shall not loan money, stocks, bonds, notes, or other evidences of indebtedness to any

corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports such transaction to the commission within a reasonable time. A properly filed tariff change with respect to energy conservation loans available to customers, who may or may not be shareholders as defined in this paragraph, will be considered adequate reporting to the commission.

(d) Reports on sale of 50% or more of stock. All transactions involving the sale of 50% or more of the stock of a public utility shall be reported to the commission within 30 days. If, after review, the commission finds that such transactions are not in the public interest, the commission shall take the effect of the transaction into consideration in the next rate making proceeding and disallow any portion of the transaction found to be unreasonable.

§23.13. Statistical Reports.

(a) Capital needs and acquisition plan. A capital needs and acquisition plan, based upon operations and construction plans, shall be filed annually by all Class A telephone, Class A and B electric, and Class A water and sewer utilities. The plan shall be accompanied by an appropriate written description.

(b) Construction reports. Each utility constructing a facility requiring reporting to the commission under §23.31(c) of this title (relating to Certification Criteria) shall report to the commission on the commission-prescribed preliminary construction report form prior to the commencement of construction. In addition, monthly progress reports, quarterly status reports, and annual cost and schedule variance analyses shall be provided for all new generating plants and major generation or transmission system modifications. The form and format of these reports shall be approved by the commission.

(c) Electric utilities

(1) Each generating electric utility, including municipally owned electric utilities, shall file the following with the commission by December 31, 1983, and annually thereafter:

- (A) projected system capacity, peak load, interruptible load, and reserve margins;
- (B) firm purchases and firm sales of capacity;
- (C) operating statistics on installed capacity;
- (D) planned capacity additions;
- (E) options for additional capacity other than new generating plant;
- (F) capacity and generation fuel mix;
- (G) peak load by customer class;
- (H) assumptions regarding economic and demographic factors impacting the forecast of peak load;
- (I) appliance saturation data for service area;
- (J) data base used in forecasting peak load;
- (K) descriptions of load management and conservation programs;
- (L) economic and demographic data for the service area;
- (M) system load in peak months;
- (N) fuel contract provisions;
- (O) number of customers by customer class.

(2) The time period for which the required data shall be filed includes the current year, the previous five years, and a forecast period of at least 10 years.

(3) The required information shall be filed on forms prescribed by the commission. Electric utility companies operating in Texas and another state(s) shall file three copies of all forms, three each for Texas-only operations and three each for total system operation, unless otherwise noted on forms.

(4) The required forms shall be filed with the commission filing clerk.

(d) Telephone utilities. Each telephone utility shall submit annually a station data report on a form prescribed by the commission.

(e) Other statistical reports. Other reports shall be filed as requested by the commission. Other reports may include, but are not limited to, customer class credit risk analyses, appliance saturation and energy use studies, and special cost of service-related studies.

§23.14. Maintenance and Location of Records. Unless otherwise permitted by the commission, all records required by these rules or necessary for the administration thereof shall be kept within the State of Texas at a central location or at the main business office located within the area served. These records shall be available for examination by the commission or its authorized representative at all reasonable hours.

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 October 6, 1983

TRD-838064

Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Earliest possible date of adoption.
November 18, 1983

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

TITLE 19. EDUCATION
Part II. Texas Education Agency
Chapter 53. Regional Education
Service Centers
Subchapter B. Administration and
Operation
19 TAC §53.23

The Texas Education Agency proposes amendments to §53.23, concerning the boards of directors of the regional education service centers. The proposed amendments provide for the elections of the regional boards to be held one month earlier (in March rather than in April) each year. Current State Board of Education rules provide for service center board members to be elected by local school board members in each region. Balloting must take place at the local school boards' regular April meetings. Frequently, one to three local school district board members will be attending their first meeting as a board member, and they are asked to vote on service center board can-

didates with whom they are not familiar. The service center executive directors believe this problem would be alleviated by the proposed amendments. The executive directors of the education service centers recommended these proposed amendments.

Richard Bennett, associate commissioner for finance, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Beverly J. Bardsley, policy development director, and Mr. Bennett have 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 school board members will have more time to acquaint themselves with candidates for the service center board and will be better able to make an informed decision. 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 Dr. Beverly J. Bardsley, Director for Policy Development, 201 East 11th Street, Austin, Texas 78701, (512) 475-7077. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

The amendments are proposed under the authority of the Texas Education Code, §11.32, which authorizes the State Board of Education, by rules and regulations, to provide for the establishment and operation of education service centers.

§53.23. *Board of Directors.*

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

(c) Terms of office.

(1) Members of the board of directors are elected for three year terms. Terms of office shall begin **May** [June] 1.

(2)-(4) (No change.)

(d) Election procedures.

(1) (No change.)

(2) Any eligible person wishing to seek election to membership on a regional service center board shall file at the headquarters office of the center in person or by certified mail between **February** [March] 1 and **February** [March] 20. No filing fee shall be required. Regional boards of directors shall adopt policies concerning filing procedures.

(3) (No change.)

(4) After **February** [March] 20 the center shall send to each member of the joint committee a list of names of eligible persons who have filed.

(5) A ballot shall be developed and submitted to all local school boards in the region by **March** [April] 1. Placement on the ballot shall be determined by drawing. Each local school board member shall have one vote for each vacancy on the board. Completed ballots shall be returned to the chairman of the regional board of direc-

tors by **April** [May] 5. The board of directors shall canvass the ballots by **April** [May] 20 and determine the winner by a plurality of the votes cast. In the event of a tie, the names of the candidates shall be resubmitted to the local school boards.

(c)-(g) (No change.)

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

Issued in Austin, Texas, on October 12, 1983.

TRD-838154

Raymon L. Bynum
Commissioner of Education

Proposed date of adoption:

January 14, 1983

For further information, please call (512) 475-7077.

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration General Practice and Procedure

22 TAC §231.35

The Board of Vocational Nurse Examiners proposes an amendment to §231.35, relating to seal of the board.

The amendment is proposed to comply with advice of state officials that the word "State" was inadvertently injected into the title several years ago but is not in the statute.

Waldeen D. Wilson, executive director, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Wilson also has determined that for each year of the first five years the rule as proposed is in effect there will be no public benefit or economic cost to persons who are required to comply with the rule.

Comments on the proposed rule may be submitted to Waldeen D. Wilson, R.N., Executive Director, Texas Board of Vocational Nurse Examiners, 1300 East Anderson Lane, Building C, Suite 285, Austin, Texas, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to govern its procedures and to carry in effect the purposes of the law.

§231.35. *Seal of the Board.* The seal of the board shall be an embossed circular seal 1-7/8 inches in diameter, consisting of two concentric circles. The inner circle shall be 1-3/16 inches in diameter and shall contain the great

seal of the State of Texas. The outer circle shall contain the wording "Texas [State] Board of Vocational Nurse Examiners."

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 October 11, 1983.

TRD-838165 Waldeen D. Wilson, R.N.
Executive Director
Board of Vocational Nurse
Examiners

Earliest possible date of adoption:
November 18, 1983

For further information, please call (512) 835-2071.

TITLE 25. HEALTH SERVICES
Part I. Texas Department of Health
Chapter 145. Long-Term Care
Subchapter E. Procedures on Long-Term
Care Facilities

25 TAC §§145.81-145.84, 145.87-145.90

The Texas Department of Health proposes amendments to §§145.81-145.84, 145.87-145.89, and new §145.90, concerning procedures on long-term care facilities.

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

Mr. Seale also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be the provision for at least two unannounced inspections in each licensed facility per year; the provision that on at least two unannounced inspections per year in each facility a citizen advocate will be invited to attend the inspection; specification of which types of inspections are to be unannounced and which types may be announced; specification that inspection and survey staff are authorized to write compliance or warning letters to facilities; specification and clarification that certain personnel positions in specified organizational entities of the department are responsible for determining the degree to which a facility meets the standards and for making decisions regarding actions that must be applied to a facility so that the facility will comply with standards; provision of definitions for abuse and neglect; clarification of procedures with regard to inspection of public records; establishment of procedures for the operation of part of a facility under the standards of a lesser category; provision for miscellaneous other clarifications; and an updated rule which adequately reflects current long-term care programs and responsibilities of the agency. There is no anticipated

economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Howard C. Allen, Acting Chief, Bureau of Long-Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Public comment will be received for 30 days after publication. A public hearing will be conducted on October 27, 1983, at 9:30 a.m. at the Texas Department of Health, 1100 West 49th Street, Austin.

The amendments and new rule are proposed under Texas Civil Statutes, Article 4442c, §§4, 5, 6B, 7, 9, and 16, and the Texas Human Resources Code, Title 6, Chapter 103, §103.005, which authorizes the department to adopt rules covering the department's procedures on the regulation of long-term care and related facilities.

§145.81. Interpretive Memoranda. The department, through the **Bureau of Long-Term Care, Quality Standards Division, or the Professional Services [Nursing and Convalescent Homes Division] Division**, will issue in a consistent and formal manner and publish when appropriate in the *Texas Register* interpretive memoranda for the purpose of explaining, clarifying, determining sense and meaning, or determining application of various elements of rules and standards involved in the department's licensing functions relating to regulation of facilities providing long-term health care. Consistent with the department's agreements with the **United States Department of Health and Human Services [Health, Education, and Welfare]** and the **Texas Department of Human Resources [State Department of Public Welfare]**, interpretive memoranda may also apply to the department's Medicare/Medicaid certification functions relating to regulation of long-term [health] care facilities **and to the department's Medicaid utilization review/quality assurance functions involving Medicaid recipient-residents in long-term care facilities.** As applicable, the department will coordinate memoranda development with the rules of other state and federal agencies.

§145.82. Personnel Performing Inspections, Surveys, and Utilization Review/Quality Assurance Visits [Inspection and Survey Personnel].

(a) The department performs licensing inspections and other functions to carry out the requirements of Texas Civil Statutes, Article 4442c, **and the Human Resources Code, Title 6, Chapter 103.** [:] The department [also] performs inspections, surveys, and certification actions with reference to long-term care facilities participating in Title XVIII Medicare and Title XIX Medicaid programs **of the U.S. Social Security Act as skilled nursing facilities or intermediate care facilities including intermediate care facilities for the mentally retarded. The department performs on-site visits pursuant to the Texas Utilization Review/Quality Assurance Program under Title XIX Medicaid.**

(b) To accomplish all of these functions, the department is staffed with **physicians, health facility specialists [surveyors], registered nurses, nutritionists, pharmacists, [medical record specialists,] medical-social personnel, specialists in mental health and mental retarda-**

tion, and architects/engineers, together with necessary and appropriate administrative personnel, program [certification] officers, program specialists [licensing officers], special investigators, reviewers, administrative technicians, and support [secretarial and clerical] staff.

§145.83. Inspections, [and] Surveys, and Visits.

(a) Inspection and survey personnel and personnel performing utilization review/quality assurance visits will perform inspections and surveys, follow-up visits, complaint investigations, investigations of abuse or neglect, on-site visits pursuant to utilization review/quality assurance, and other contact visits from time to time as they deem [deemed] appropriate [by the inspection and survey personnel] or as required for carrying out the responsibilities of licensing, [and] Titles XVIII/XIX certification, and Title XIX utilization review/quality assurance [responsibilities].

(b) An inspector or surveyor of particular expertise will normally perform inspections in segments of operation speaking to his expertise; however, this does not preclude an inspector or surveyor of one expertise from assisting an inspector or surveyor of another expertise. Inspectors or surveyors who have completed federal official training as either general or special health facility surveyors may be used from time to time to perform certain inspections falling within other segments of operation than that of an inspector's or surveyor's expertise. However, substitution of required disciplines or areas of expertise relative to personnel performing utilization review/quality assurance visits is very limited.

(c) An inspection pursuant to licensure or certification may be conducted by an individual inspector or surveyor or by a team, depending on the purpose of the inspection or survey, size of facility, levels of care and service provided by the facility, and other factors. The team composition may vary from two members to several members. However, an inspection by a single person may be necessary from time to time.

(d) To determine standard compliance which cannot be verified during regular working hours [For good reason], night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents while satisfying the intent of the inspection.

(e) With respect to being unannounced or announced, inspections, surveys, and other visits shall meet the following:

(1) All inspections, surveys, and other visits that are routine in nature and that are made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified.

(2) Call-back visits will be unannounced, although it is recognized that the schedule of a call-back visit often relates to a date of correction made known to or by a facility in advance; any exceptions must be justified.

(3) Any nonroutine or special inspection, survey, and other visit involving the appropriateness or some aspect of resident care will be unannounced unless particular circumstances justify otherwise.

(4) Complaint investigations will be unannounced.

(5) Some inspections or visits may be announced, such as:

(A) inspections or visits to determine the progress or completion of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs;

(B) inspections or visits to determine the acceptability of certain proposed or newly purchased care systems such as computerized systems of medical records or special medication handling systems; and

(C) conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(6) Consultation visits should be arranged with the facility in advance; inspections to determine how a physical plant may be expanded or upgraded may be considered consultation visits.

(7) The inspections, surveys, and visits described in this subsection are listed as examples and are not intended to be all-inclusive.

(f) Any department employee who intentionally, knowingly, or recklessly discloses to any unauthorized person the date, time, or any other fact about an unannounced inspection before the inspection occurs, commits an offense under Texas Civil Statutes, Article 4442c. The offense is a Class B misdemeanor and any department employee convicted is ineligible for state employment.

(g) Persons authorized to receive advance information on unannounced inspections include:

(1) citizen advocates invited to attend inspections, as described in subsection (i) of this section.

(2) representatives of the Texas Department on Aging serving as ombudsmen or authorized to attend or participate in inspections.

(3) representatives of the Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long-Term Care Program.

(4) representatives of the Texas Department of Human Resources whose programs relate to the Medicare/Medicaid Long-Term Care Program.

(5) persons of other federal, state, or local governmental agencies or organizations whose responsibilities require notice of inspections.

(6) any person authorized by law to make inspections relating to inspections of the department or authorized by law to accompany inspectors.

(h)(e) The department will conduct at least two [one] unannounced licensure inspections [inspection] per year of each institution licensed under Texas Civil Statutes, Article 4442c [institution]; additional inspections may be made by the department as deemed necessary, and such additional inspections may be announced or unannounced but must conform to subsection (e) of this section. The 12-month period beginning on October 1 of each year and ending on September 30 of the following year will be considered at the annual period during which [for each licensed institution] at least two [one] unannounced licensure inspections [inspection] will be made of each licensed institution.

(i)(f) In each year for at least two [one] unannounced licensure inspections [inspection] of each facility licensed under Texas Civil Statutes, Article 4442c, the

department will invite to [in] the inspections [inspection] at least one person as a citizen advocate from the American Association of Retired Persons, the Texas Senior Citizens Association, the Texas Retired Federal Employees, the Texas Department on Aging certified long-term care ombudsman, or any other statewide organization for the elderly; the invitations to these organizations will be made by the department [to these organizations]. The department will provide to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Opinions, observations, and conclusions of citizen advocates, after discussion with the professional staff of the inspection team, shall be advanced if appropriate, within the field staff report and not independently or publicly. The schedule of inspections in this category will be arranged confidentially in advance [confidentially] with the organizations. Performing these inspections is not conditioned on the acceptance of the invitation or participation by the advocates. Advocates will provide their own transportation. The 12-month period beginning on October 1 of each year and ending on September 30 of the following year will be considered the annual period during which [for each licensed institution] at least two [one] unannounced licensure inspections [inspection] will be made of each licensed institution with invitation for citizen advocate participation. Invitations to citizen advocates do not apply to institutions that provide maternity care.

§145.84. Determinations and Actions Pursuant to Inspections, Surveys, and Visits.

(a) Determining compliance, reporting, and notification of new rules and information.

(1) The director of the Quality Standards Division, Bureau of Long-Term Care, or the department, will determine if a facility meets the rules, standards, and interpretive memoranda relating to licensing and relating to participation in Titles XVIII and XIX as may be applicable, including both physical plant and facility operation requirements. Inspection and survey personnel and, as appropriate, personnel performing on-site utilization review/quality assurance visits, are authorized to make judgments based on rules, standards, and interpretive memoranda, using their training, experience, and professional expertise in determining the level of compliance of a facility, subject to the approval of the director, Quality Standards Division.

(2) Violations or deficiencies will be listed on forms designed for the purpose of the inspection, survey, or visit, or will be listed in letter, narrative, or other style when the purpose of the visit deems that method more appropriate. At the conclusion of an inspection or survey, the violations or deficiencies will be discussed in an exit conference with the facility's management, that is, with the administrator or manager or with that person's designee. A copy of the official list of violations or deficiencies will be left with the facility when one can be appropriately prepared at the time of the exit conference; otherwise a written outline of the violations or deficiencies will be left, and a copy of the official list will be mailed. Copies of any narratives or similar papers written to further describe the conditions found will be furnished to the facility. Violations or deficiencies found during com-

plaint investigations will be discussed with the facility management and a plan of correction obtained. In most cases when a disciplinary action beyond a warning or compliance notice is warranted, it is appropriate for inspection and survey personnel to advise the facility management of the disciplinary action being recommended; if a final action determined by the department is different from the recommended action, the facility management will be so informed.

(3) Each facility will be notified of applicable new rules and standards at the time such rules and standards are filed with the *Texas Register*; these notifications are intended to provide notice of rules and standards in advance of inspections and surveys, unless otherwise required. Similarly, each facility will be notified of applicable interpretive memoranda as soon as such memoranda are in final form and are released for use or are filed in the *Texas Register*; where interpretive memoranda are effective for use at the time of release or publication, unless otherwise required, an additional time of not less than 20 days will be given prior to application to the facility of the content of an interpretive memorandum in those cases where an additional obligation would be imposed on the facility. Rules or interpretive memoranda pertaining to the internal operations of the department are exempted.

[(a) The director of the Nursing and Convalescent Homes Division of the department will determine if a facility meets the rules, standards, and interpretive memoranda for licensing and for participation in Titles XVIII and XIX as may be applicable, including both physical plant and facility operation requirements. Inspection and survey personnel are authorized to make judgments based on rules, standards and interpretive memoranda, using their training, experience, and professional expertise in recommending the level of compliance of a facility, subject to the approval of the director of the division. Licensing violations or deficiencies will be listed on report forms prepared by the department for that purpose; violations or deficiencies with respect to Titles XVIII or XIX certification will be listed on report forms which other agencies require to be used in the certification process. On completion of an inspection, survey, or full post-survey visit, a copy of the deficiency report form and narratives or similar papers further describing deficiencies relating to the inspection, survey, or visit prepared by inspection or survey team members will be left with the facility administrator or person in charge. When such procedure is not practical, the copies will be sent to the administrator. From time to time, violations or deficiencies may be more appropriately described in a letter or correspondence addressed to the facility. A reasonable effort will be made to notify each facility of applicable new rules and standards at the time such rules and standards are filed with the *Texas Register*; these notifications are intended to provide notice of rules and standards in advance of inspections and surveys, unless otherwise required. Similarly, a reasonable effort will be made to notify each facility of applicable interpretive memoranda as soon as such memoranda are in final form and are released for use or are filed in the *Texas Register*; where interpretive memoranda are effective for use at the time of release or publication, unless otherwise required, an

additional time of not less than 20 days will be given prior to application to the facility of the content of an interpretive memorandum in those cases where an additional obligation would be imposed on the facility. Rules or interpretive memoranda pertaining to the internal operations of the department are excepted.]

(b) Determining degree of noncompliance and determining disciplinary actions.

(1) Inspection and survey personnel and, as appropriate, personnel performing on-site utilization review/quality assurance visits, will determine the extent to which violations or deficiencies adversely affect the health, safety, or welfare of residents of a facility and adversely affect the licensure status of, when appropriate, the certification status of the facility; determinations are subject to review, concurrence, or other determination by the director, Quality Standards Division, except in cases involving serious disciplinary actions, by the chief, Bureau of Long-Term Care, as described in paragraph (4) of this subsection.

(2) The determinations by inspection and survey personnel that a facility is in compliance or substantial compliance with requirements is subject to review, concurrence, or other determinations of the director, Quality Standards Division. A facility may have certain violations or deficiencies and yet be considered to be in substantial compliance as long as violations or deficiencies can be reasonably expected to be corrected with acceptable methods and within an acceptable time.

(3) When inspection and survey personnel determine that a facility is out of compliance with requirements to a degree that the facility must be specially warned beyond the routine methods of apprising the facility of its violations or deficiencies, the inspection and survey personnel are authorized to send the facility a compliance or warning letter, subject to review, concurrence, or other determination of the director, Quality Standards Division.

(4) Procedures regarding serious violations or deficiencies are as follows:

(A) Where violations or deficiencies are serious to a degree that more stringent action than a compliance or warning letter notice is warranted, the inspection and survey personnel will recommend one or more actions to be taken to rectify the violations or deficiencies. Such actions may include:

(i) requesting the state Title XIX agency to hold vendor payments to a facility;

(ii) moving toward decertification of a facility or toward denying certification status of a facility with respect to the Title XVIII and Title XIX programs, as may be applicable;

(iii) moving toward invocation of an automatic cancellation clause in a facility's contract to provide Title XVIII or Title XIX services, as may be applicable;

(iv) seeking civil penalties;

(v) requesting the appointment of a trustee to operate a facility;

(vi) moving toward suspending, denying, or revoking the license of a facility; or

(vii) causing any other corrective action as may be provided for by applicable law or rule.

(B) The violations or deficiencies and the recommended actions will be reviewed by the chief, Bureau of Long-Term Care, or in his/her absence by his/her designee; the director, Quality Standards Division, Bureau of Long-Term Care, or in his/her absence by his/her assistant or designee; and other personnel as may be requested to engage in the review. In cases involving direct patient/resident care and a recommendation of decertification or more severe disciplinary action, the review panel shall include a physician and a registered nurse.

(C) The chief, Bureau of Long-Term Care, will determine the appropriate action or actions needed to rectify the condition in the facility. Sections 145.141-145.147 of this title (relating to Procedures Covering Certification and Decertification of Long-Term Care Facilities Which Participate in the Title XIX Medical Assistance Program) may be considered in determining an appropriate action.

(D) The director, Quality Standards Division, will carry out the decisions of the chief, Bureau of Long-Term Care, in accordance with applicable laws, rules, and regulations.

(5) Inspection and survey personnel will determine a time frame or will determine the appropriateness of a time frame proposed by a facility to correct violations or deficiencies, subject to review, concurrence, or other determination by the director, Quality Standards Division, or by the chief, Bureau of Long-Term Care, in cases where the appropriateness of a time frame is related to a rectifying action determined by that person.

(6) Reference is made to §§ 145.141-145.147 of this title (relating to Procedures Covering Certification and Decertification of Long-Term Care Facilities Which Participate in the Title XIX Medical Assistance Program).

[(b) The division director will determine the extent to which violations or deficiencies jeopardize the licensure or, when appropriate, the certification status of a facility. The division director will determine or will approve a time within which a violation or deficiency must be corrected or will determine or approve the acceptability of a time and method proposed by a facility in a plan of correction. A facility may have violations or deficiencies and yet be in substantial compliance as long as violations or deficiencies can be reasonably expected to be corrected with acceptable methods and within an acceptable time. Where there are violations or deficiencies, actions taken by the division director will be determined based on his judgment and on the judgment and expertise of the division's professional personnel, or on the requirements of the contracts to perform certification functions. Actions will vary with the nature and extent of violations or deficiencies, and may range from noting violations and calling for timely correction to immediate action toward decertification or license suspension or revocations.]

§145.87. Resident Placement Under Emergency License Suspension or Closing Order. In those circumstances when it is necessary to invoke the provision of Texas Civil Statutes, Article 4442c, §6B, emergency closure order, and conditions warrant a relocation of patients/residents, whether for a total facility or distinct part, the following rules shall apply:

(1) In all circumstances, a patient's/resident's rights or freedom of choice in selecting treatment facilities shall be respected.

(2) When a representative or representatives of the Texas Department of Health encounter(s) a situation subject to procedures of [Texas Civil Statutes, Article 4442c,] §6B, the following actions shall take place:

(A) (No change.)

(B) The facility staff shall notify each patient's/resident's guardian or responsible party and attending physician, advising them of the action in process.

(C) The patient/resident shall be given opportunity to designate a preference for a specific facility or for other arrangements. In some instances, however, family members or guardians must or will take that responsibility.

(D) When there are no arrangements made under the above provisions, the department shall arrange for relocation to other facilities in the area. A facility chosen for relocation must be in good standing with the department. The facility chosen must be able to meet the needs of the patient/resident, i.e., be of conforming classification status.

(E) If absolutely necessary, to prevent transport over substantial distances, a receiving facility will be granted authority to exceed its licensed capacity, provided the health and safety of patients/residents is not compromised and the facility can meet the increased demands for direct care personnel and dietary services. A facility may exceed its licensed capacity under these circumstances, monitored by the Texas Department of Health staff, until suitable arrangements can be made.

(F) With each patient/resident transferred, the following reports, records, and supplies shall be transferred to the receiving institution:

(i) (No change.)

(ii) Personal information such as name and address of next of kin, guardian or party responsible for the patient/resident; attending physician; Medicare and Medicaid identification number; social security number; and other identification information as deemed necessary and available.

(iii) All medication dispensed in the name of the patient/resident for which physician's orders are current shall be inventoried and transferred with the patient/resident. Medications past an expiration date or discontinued by physician order shall be inventoried for disposition under other provisions of state law. Only current prescription medications taken on a regular or as needed basis shall be transferred with the patient/resident.

(iv) The patients/residents may take such personal belongings, clothing, and toilet articles as they desire. An inventory of **personal property and valuables** [these items] should be made by the closing facility, in order to balance their inventory should relocation become permanent.

(v) Patient/resident trust fund accounts maintained by the closing facility, along with any valuables held for safekeeping, will be transferred with the patient/resident to the receiving facility. All items should be properly inventoried and receipts obtained for audit purposes by the appropriate state agency.

(G) Should the closed facility be permitted to

reopen, [either] through achieving compliance, sale, being operated under a receivership or management contract, or any other methods, the relocated patient/resident should have a priority option over other new patients/residents to return, stay in the receiving institution, or choose any other accommodations in accordance with his or her right of freedom of choice. Otherwise, priorities to return will be set by order of notification, if facility can meet the patient's/resident's needs.

(H) (No change.)

§145.88. Report of Abuse and Neglect.

(a) Reports are to be made to the Texas Department of Health or to any local or state law enforcement agency. A person reporting a case of abuse or neglect must have cause to believe that an [a] institution [nursing home] resident's physical or mental health or welfare has been or may be adversely affected by abuse or neglect caused by another person or persons. The reported abuse or neglect will be considered by the department as being alleged until substantiated by the department.

(b) Legitimacy of reports.

(1) For a report to be considered a legitimate report under Texas Civil Statutes, Article 4442c, §16, the report must contain:

(A) the name and address of the institution [nursing home] resident;

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

(2) (No change.)

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

(e) If an investigation of a report of abuse or neglect is **unsubstantiated, that is, the department** concludes that no abuse or neglect adversely affecting the physical or mental health or welfare of a resident [patient] has occurred [or is likely to occur], the investigation will be completed and handled in the usual way the department handles complaints.

(f) If an investigation of a report of abuse or neglect is **substantiated, that is, the department** concludes that abuse or neglect adversely affecting the physical or mental health or welfare of a resident has occurred [or is likely to occur] the investigation will be completed in the manner described in §16. The investigator will complete the report and make recommendations for action, the recommendations on the report will usually relate to further action the department should take or action or correction the facility must make. The division director or bureau chief will review the report and make recommendations to the commissioner for final action. The department will send a copy of the report together with the recommendations and final determinations to the appropriate district attorney and the appropriate law enforcement agency; the district attorney and law enforcement agency will determine their own actions.

(g) Abuse or neglect defined under §16 is abuse or neglect **which is substantiated, that is, abuse or neglect** which causes [or may cause] a resident's physical or mental health or welfare to be adversely affected. Should [there be] abuse or neglect **be unsubstantiated**, [which does not cause or may not cause a resident's physical or mental health or welfare to be adversely affected] the investigation need not be completed under §16 methods. [The department will not charge a facility with abuse or neglect under §16 when investigations conclude the alleged

abuse or neglect is not substantiated.] The department will establish and maintain in Austin, Texas, a central registry of reported cases of abuse or neglect; the registry will not contain those reports and those institutions for which the alleged abuse or neglect is not substantiated.

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

(1) Abuse -- The willful, knowing, or reckless act of mistreatment by anyone through words, physical action, or omission which results in physical injury or emotional or mental damage to a resident.

(2) Neglect -- The habitual careless deprivation of life's necessities which causes physical or emotional injuries to a resident or adversely affects the resident's health and development.

(i) All reports, records, and working papers used or developed in an investigation under §16 are confidential, with the following exceptions:

(1) The department's completed written investigation report on substantiated cases of abuse or neglect shall be furnished to the district attorney and appropriate law enforcement agency. The department also may release these reports to any other public agency the department deems appropriate to the investigation.

(2) The department's completed written investigation reports on the unsubstantiated cases of abuse and neglect are open to the public, provided the report is deidentified. The process of deidentification means removing all names and other personally identifiable data, including any information from witnesses and others furnished to the department as part of the investigation.

(3) The complainant will be notified of the results of the department's investigation of a reported case of abuse or neglect, whether substantiated or unsubstantiated.

(4) The facility will be notified whether an investigated case is substantiated or unsubstantiated and of any change in that determination which may be necessary from further developments in the case or from further consideration of the case.

(h) The reports, records, and working papers used or developed in an investigation under §16 are confidential; however, by this rule, copies of investigation reports of verified cases of abuse or neglect under §16, or those cases not verified as substantiated, will be furnished to the following: the appropriate court, district attorney, and law enforcement agency; other agencies or individuals which the department considers appropriate to the investigative purposes of protecting the resident; and the institution, with proper deidentification. The complainant will be sent a confidential summary or abbreviated form of the investigation.]

(j)(i) Where the case of abuse or neglect involves care or treatment of a person in a hospital or clinic, the department will furnish to the treating physician at the hospital or clinic any information the department may have which is pertinent to the care or treatment of the person. The hospital or clinic shall keep this information confidential.

(k)(j) The following interpretations are made relating to the detailed determinations of the investigation:

(1) The names and conditions of the other insti-

tion [nursing home] residents are interpreted to mean only those residents who are affected or likely to be affected by the case. The conditions of the residents mean their general conditions as they relate to the abuse or neglect and do not necessarily mean their medical diagnoses.

(2) The evaluation of the persons responsible for the care of the institution [nursing home] residents relates to a general evaluation of the adequacy of the persons in numbers and the competence of persons to deliver the care intended, including specific evaluation individually of those persons directly involved in causing abuse or neglect.

(3) The adequacy of the institution [nursing home] environment is a general evaluation which may include general operation, competence of staff, attitude of staff, physical environment, and other considerations.

(l)(k) Should a report made by a person under §16 be partly a substantiated [confirmed] case of abuse or neglect and partly some other conditions, that portion which is a substantiated [confirmed] case of abuse or neglect will be handled as called for in this section.

§145.89. *Procedures for Inspection of Public Records.*

(a) Procedures for inspection of public records will be in accordance with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, and as further described in this section [herein].

(b) The department's Bureau of Long-Term Care will be responsible for the maintenance and release of records on licensing, certification, quality of patient/resident care in long-term care facilities, and other related records.

(c) The application for inspection of public records is subject to the following criteria:

(1) The application is made to the Bureau of Long-Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(2) The requestor shall identify himself/herself.

(3) Whenever possible, the requestor shall give reasonable prior notice of the time for inspection and/or copying of records.

(4) The requestor shall specify the records requested.

(5) On written applications, if the Bureau of Long-Term Care is unable to ascertain the records being requested, the bureau may return the written application to the requestor for further specificity. In addition, it may be necessary, depending on the records being requested, for the bureau to require the requestor to personally appear at the bureau to specify the records being requested.

(6) The bureau shall provide the requested records as soon as possible. However, if the records are in active use, or in storage, or time is needed for proper deidentification or preparation of the records for inspection, the bureau shall so advise the requestor and set an hour and date within a reasonable time when the records will be available.

(c) All applications to inspect or copy the subject records should be made to the Bureau of Long-Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas. Requestors should, if possible, give the bureau reasonable prior notice of the time that the requestor would like to inspect or copy the records.

(d) Requestors shall give proper identification and shall specify the records to be inspected or copied.]

(d)[(e)] Original records may be inspected or copied, but in no instance will original records be removed from department offices.

(e) Records maintained by the Bureau of Long-Term Care are open to the public, with the following exceptions:

(1) Incomplete reports, audits, evaluations, and investigations made of, for, or by the department are confidential;

(2) Reports of abuse and neglect are confidential to the extent authorized by §145.83 of this title (relating to Inspections, Surveys, and Visits), subsection (f);

(3) All names and related personal, medical, or other identifying information about a resident/patient are confidential;

(4) Information about any identifiable person which is defamatory or an invasion of privacy is confidential;

(5) Information identifying complainants or informants is confidential;

(6) Itineraries of surveys and inspections are confidential because of the confidentiality requirements of unannounced inspections in §145.83 of this title (relating to Inspections, Surveys, and Visits), subsection (f);

(7) To implement this subsection, the bureau may not alter or deidentify original records. Instead, the bureau will make available for public review or release only a properly deidentified copy of the original record.

[(f)] All information deemed confidential by law, either constitutional, statutory, judicial, or regulatory, shall not be disclosed to the public.

[(1)] Information pertaining to reports of and investigation papers of abuse and neglect under Texas Civil Statutes, Article 442c, §16, is confidential except for information on the central registry provided in §16 and except as is otherwise provided in §145.88 of this title (relating to Reports of Abuse and Neglect).

[(2)] The following information is confidential and will be deidentified on record copies that are made for public view or copying:

[(A)] Sources of complaints.

[(B)] Names and related personal information regarding patients and residents in long-term care facilities.

[(C)] Names of applicable health care practitioners.

[(3)] An original record will not be altered or deidentified to meet the provisions of paragraph (2) of this subsection. Only a properly deidentified copy will be made available for public view or release to a requestor.

[(4)] Itineraries of survey personnel are confidential because of the requirements of unannounced inspections.]

(f)[(g)] Charging for copies of records.

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

(3) Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records shall be borne by the requestor on a cost basis in accord with costs established by the State Purchasing and General Services Commission or the Texas Department of Health for office machine copies. The charges are as follows:

(A) The maximum charge for the first copy

of a letter- or legal-size page is \$.55.

(B) Subsequent copies of the same document or of succeeding pages is \$.15 per page.

(C) If the actual cost of the reproduction of such documents is less than the maximum charge established either by the State Purchasing and General Services Commission or the Texas Department of Health, the bureau may charge the lesser amount.

(D) If the State Purchasing and General Services Commission or the Texas Department of Health change the established charges, the bureau will use the new charges.

(4) For documents that are mailed, the department will charge for the postage at the time it charges for the production. All applicable sales taxes will be added to the cost of copying records.

(5) When a request involves more than one long-term care facility, each facility will be considered a separate request.

[(3)] Any expenses for standard-size copies incurred in the reproduction, preparation, or retrieval of records shall be borne by the requestor on a cost basis in accord with costs established by the State Board of Control for office machine copies. The charges are as follows: maximum charge for the first copy of a letter- or legal-size page is \$.55. Subsequent copies of the same document or of succeeding pages is \$.15 per page. If the actual cost of reproducing such documents is less than the maximum charge established by the Board of Control, the bureau may charge the lesser amount. When the documents are mailed, the department may charge for the postage at the same time it charges for the reproduction. All applicable sales taxes will be added to the cost of copying records. When a request involves more than one long-term care facility, each facility will be considered as a separate request.]

(g)[(h)] The bureau will make a reasonable effort to furnish records promptly and will extend to the requestor all reasonable comfort and facility for the full exercise of the rights granted by the Open Records Act.

§145.90. Operating a Part of a Facility under the Standards of a Lesser Licensing Category.

(a) A facility licensed under Texas Civil Statutes, Article 442c, is allowed to operate a portion of the facility under the standards of a lesser licensing category, including the standards for adult day care and adult day health care facilities licensed under the Human Resources Code, Title 6, Chapter 103.

(b) The portion of the facility shall be an identifiable separate section and shall have a lesser number of beds than the basic facility.

(c) The following licensing categories are ranked from greater to lesser as follows:

(1) nursing home (Article 442c); facility for the mentally retarded, Type A (Article 442c);

(2) custodial care home (Article 442c);

(3) personal care home, Type B (Article 442);

(4) personal care home, Type A (Article 442c); facility for the mentally retarded, Type B (Article 442c);

(5) adult day care or adult day health care facility (Human Resources Code, Title 6, Chapter 103).

(d) Maternity home is a licensing category under Article 442c; the department does not envision a ma-

ternity home having any relationship to other categories.

(e) Where the facility section of lesser category operates under the standards of the lesser category, the facility section shall be licensed under the lesser category with a corresponding reduction in licensed capacity of the higher category.

(f) Living, dining, food service, administrative, housekeeping, maintenance, and similar services may be shared by the basic facility and the facility section of lesser category, unless special conditions of residents and programs of care make a sharing not advisable, as determined by the department.

(g) Each licensed category shall have its own direct resident care staff unless approved otherwise by the department.

(h) Unless federal requirement prohibits, the operation of a portion of a facility under the standards of a lesser licensing category shall not constitute abandonment of the higher category of service under the Certificate of Need Program, as provided in the Texas Health Planning and Development Act, Texas Civil Statutes, Article 4418h.

(i) If the facility section of lesser category converts or reconverts to the basic category, another higher category, or another category, the physical plant will be adjusted as necessary to meet the requirements of the new category but only to the extent necessary had that section been licensed in the new category during the time it occupied the lesser category.

(j) Any construction or physical plant provision which was made during a period of licensure under a lesser category and which is not acceptable under a category to which converted or reconverted shall be corrected.

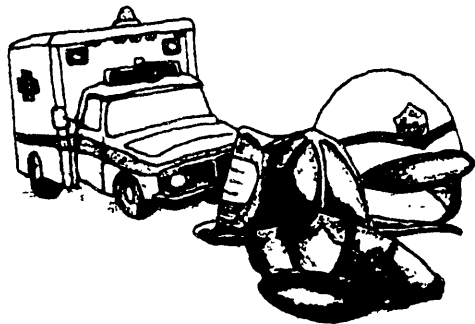
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on October 7, 1983.

TRD-838088 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of Health

Proposed date of adoption
December 10, 1983

For further information, please call (512) 458-7706.



TITLE 28. INSURANCE Part I. State Board of Insurance

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

Powers and Duties

Examination and Corporate Custodian and Tax

059.01.15.201, .206, .207, .209, .214, .216, .217, .220

The State Board of Insurance proposes amendments to Rules 059.01.15.201, .206, .207, .209, .214, .216, .217, and .220, concerning various requirements and procedures relating to the Examination and Corporate Custodian and Tax Divisions of the State Board of Insurance. The rule changes delete extraneous language, clarify the rules, conform them to a relevant attorney general's opinion, and conform them to recent statutory law changes. Other than conforming the rules to changes in statutes, there are no substantive amendments in the proposals. There are no changes to board procedures or requirements other than what is already required by law.

R. B. Ashworth, deputy insurance commissioner, financial monitoring group, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. There is no anticipated additional cost of compliance for small businesses from these amendments since there is no change in board practices other than what is already required by law.

Mr. Ashworth also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be clearer, more understandable rules with extraneous language deleted. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to R. B. Ashworth, Deputy Insurance Commissioner, Financial Monitoring Group, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

These amendments are proposed under the Texas Insurance Code, Article 1.04, and elsewhere, which provides the board with authority to make nonsubstantive editorial changes to existing rules, and under the Administrative Procedure and Texas Register Act, §4, pursuant to which the board may promulgate procedural rules necessary and appropriate to carry out its statutory function. The amendments are also pro-

posed under authority of the Texas Insurance Code, Article 1.10, §7, which provides the board with authority to discipline licensees.

.201. Scope These rules are supplementary to and cumulative of existing statutes and rules of the State Board of Insurance [which affect the functioning of the Examination Division]. In the case of an ambiguity or contradiction between these rules and any statute, the provisions of the [such] statute controls.

.206. Admissible Assets This rule is promulgated in reference to Attorney General Opinion WW-293-A. The [position of the State Board of Insurance relative to admissibility of assets is that the] portion of any asset not qualifying as a legal investment shall not be admitted. The companies shall [further be required to] dispose of such inadmissible assets **or take such action as is necessary to bring the investment into legal compliance.** [The] Companies will not be required to dispose of inadmissible contributed assets.

.207. Discrimination as to Premium Notices to Accident or Health Insurance Policyholders. There shall be no discrimination between individuals of the same class and of essentially the same hazard holding policies or contracts of accident or health insurance **respecting** [as to the] notification to [of such] individuals of premiums due or about to become due. [The provisions of Article 21.21, §4, paragraph 7(b) of the Texas Insurance Code, prohibit any discrimination between policyholders as to fees, rates, benefits, terms, or conditions " . . . or in any other manner whatever."'] The discrimination as between policyholders in the expenditure of company funds for such items as postage, office supplies, clerical salaries, machine and equipment time, etc , or in any other manner concerning the notification of such policyholders of premiums due or about to become due constitutes a violation of the Texas Insurance Code, Article 21.21. Therefore, if any company elects to follow the practice of furnishing premium notices to any policyholder, it is [shall be] incumbent upon such company to follow a uniform practice of sending such premium notices to all policyholders. Wherever in the course of an examination the **State Board of Insurance** [Examination Division] finds that **an insurer**

[a company] follows the practice of not sending notices to certain individuals with the apparent intention of bringing about a lapse of the policy by reason of failure of the policyholder to pay his premium within the period required by the contract, it shall accumulate such facts as necessary to show a violation, if any, of Article 21.21. In this connection, reference is made to the Texas Insurance Code, Article 1.10, §7, which provides [that] the State Board of Insurance **with authority to take disciplinary action against any company for failure to comply with applicable law** [shall suspend the entire business of any company while it is not in compliance with any provision of the laws relative to insurance].

.209. Earned Surplus Debentures, Surplus Notes, Income Debentures, and Other Contingent Evidences of Indebtedness Where in the course of an examination the **State Board of Insurance** [Examination Division] encounters any outstanding forms of indebtedness which are not held to be balance sheet liabilities by the **board** [division], it shall indicate on the examination report balance sheet by footnote immediately below the capital and surplus section, the amount of such outstanding contingent liabilities stating briefly the rate of interest accruing thereon, the probable due date, and the source from which such liabilities are to be paid

.214. Calculation of the Liability for Unrealized Profit on the Sale of Foreclosed Property and/or Home Office Real Estate

(a) The **State Board of Insurance** [Examination Division] shall utilize **the formula specified in this subsection** [set out below] in the calculation or determination of the liability to be recognized in the financial statements of examination reports and annual statements for unrealized profit on the sale of foreclosed property [and] or home office real estate **or both**. This formula has been adopted to encourage management to bargain or negotiate for cash down payments, preferably sizeable, in the sale of real property as described above or in the sale of investment real estate. The thrust of the formula is to allow the immediate earning of cash down payments less the expenses directly attributable to the sale of the property. The formula is as follows:

$$\frac{\text{Unpaid Balance of Note(s)}}{\text{The Original Amount of Note(s)}} \times \text{Deferred Profit at The Date of Sale}$$

The following schedule reflects examples based upon the hypothetical sale of real estate reflecting a substantial down payment and a lesser down payment:

Assumption of Sale of Real Estate with Book Value of \$45,000

Selling price		\$100,000
Book value		45,000
Gross Profit		<u>55,000</u>
Less selling expenses:		
Commission on sale	\$5,000	
Legal fees and miscellaneous expenses	<u>2,500</u>	7,500
Net Profit		<u>\$ 47,500</u>

	<u>Example No. 1</u>	<u>Example No. 2</u>
Selling price	\$100,000	\$100,000
Note receivable	50,000	75,000
Cash Down Payment	<u>\$ 50,000</u>	<u>\$ 25,000</u>
Selling expenses	7,500	7,500
Net Cash Down Payment	<u>\$ 42,500</u>	<u>\$ 17,500</u>
Net profit	\$ 47,500	\$ 47,500
Net cash down	42,500	\$ 17,500
Deferred Profit at Date of Sale	<u>\$ 5,000</u>	<u>\$ 30,000</u>

Loan made on December 31, 1973, to be retired at \$10,000 per year plus interest, with first principal payment due December 31, 1974.

Deferred Profit at Various Dates

<u>Dates</u>	<u>Example No. 1</u>	<u>Example No. 2</u>
12/31/73	$\frac{\$50,000}{\$50,000} \times \$5,000 = \$5,000$	$\frac{\$75,000}{\$75,000} \times \$30,000 = \$30,000$
12/31/74	$\frac{\$40,000}{\$50,000} \times \$5,000 = \$4,000$	$\frac{\$65,000}{\$75,000} \times \$30,000 = \$26,000$
12/31/75	$\frac{\$30,000}{\$50,000} \times \$5,000 = \$3,000$	$\frac{\$55,000}{\$75,000} \times \$30,000 = \$22,000$

(b) The [above] formula specified in subsection (a) of this rule is [shall be] applicable to all sales of real estate; provided, however, companies [shall] have the option of adopting the current formula to prior transactions which have been subject to the procedure outlined in Exhibit A which follows the text of this subsection [rule]. Should companies choose to apply the current formula to a prior transaction, the State Board of Insurance [Examination Division] shall allow similar treatment in the examination report. In the latter instance, the State Board of Insurance [Examination Division] still has the burden of verifying the factual presentations utilized in the company's decision. The application of this formula shall be

made only after thorough analysis of all written or verbal agreements relative thereto including, but not limited to, leaseback agreements, repurchase or buy-back agreements, contingent deferred expenses, or other side agreements which have inherent qualities or characteristics which have a material effect on whether the selling transaction is bona fide.

Exhibit A: The formula for calculation of the liability for unrealized profit on the sale of foreclosed property [and/] or home office real estate or both where a part of the profit is capitalized and will not be recovered until a future date]. The formula is as follows:

$$\frac{\text{Unpaid Balance of Note}}{\text{Sale Price}} \times \text{Net Profit} = \text{Liability for Unrealized Profit}$$

The following schedule reflects two examples of the practical application based on a token down payment and the sale without a down payment:

Assumption of Sale of Real Estate with Book Value of \$45,000

Selling price		\$100,000
Book value		<u>45,000</u>
Gross Profit		55,000
Less selling EXPENSES [costs]:		
Commission on sale	\$5,000	
Legal fees and miscellaneous EXPENSES [cost]	<u>2,500</u>	7,500
Net Profit		<u>\$47,500</u>

	<u>Example No. 1</u>	<u>Example No. 2</u>
Cash down payment	\$10,000	\$ -0-
Original loan retained	<u>90,000</u>	<u>100,000</u>
Selling price	<u>\$100,000</u>	<u>\$100,000</u>

Loan made on December 31, 1964, to be retired at \$10,000 per year plus interest with first principal payment due December 31, 1965.

Unrealized Profit at Various Dates

<u>Dates</u>		<u>Example No. 1</u>		<u>Example No. 2</u>
12/31/64	$\frac{\$ 90,000}{\$100,000} \times$	\$47,500 = \$42,750		$\frac{\$100,000}{\$100,000} \times \$47,500 = \$47,500$
12/31/65	$\frac{\$ 80,000}{\$100,000} \times$	\$47,500 = \$38,000		$\frac{\$ 90,000}{\$100,000} \times \$47,500 = \$42,750$
12/31/69	$\frac{\$ 40,000}{\$100,000} \times$	\$47,500 = \$19,000		$\frac{\$ 50,000}{\$100,000} \times \$47,500 = \$23,750$
12/31/72	$\frac{\$ 10,000}{\$100,000} \times$	\$47,500 = \$ 4,750		$\frac{\$ 20,000}{\$100,000} \times \$47,500 = \$ 9,500$

.216. *Annual Credit Insurance Privilege Fee Under the Texas Insurance Code, Articles 4.09 and 3.53.* Any company intending to issue policies of credit insurance under the Texas Insurance Code, Articles 4.09 and 3.53, during a particular year must send a check of \$500 in payment of the credit insurance privilege fee to the **attention of the Corporate Custodian and Tax Division of the State Board of Insurance** [Examination Division] during January of that year, or at the time such company first engages during the calendar year in the writing of such credit insurance if such time is later than January. The **State Board of Insurance** [Examination Division] does not invoice for this payment.

.217. *Premium Taxes Provided for Under the Texas Insurance Code, Article 3.25 [Due the State from Companies No Longer Currently Licensed in Texas].* Premium taxes due the State of Texas as provided for under the Texas Insurance Code, Article 3.25, are due from life insurance companies no longer currently licensed in Texas if such companies continue to collect renewal premiums from citizens of this state. Such companies are subject to pay each year the same occupation tax as is imposed by law on companies holding a certificate of authority to transact business in Texas. [Attached hereto and incorporated herein by reference is] A form titled "**Texas Tax Return**" must [to] be completed and returned to the **State Board of Insurance** [Examination Division] prior to March 1 annually along with a check to cover the taxes due is attached to these rules. The form is adopted by reference and may be obtained from the **Corporate Custodian and Tax Division, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786**. Taxes are subject to the retaliatory law, the Texas Insurance Code, Article 21.46.

.220. *Premium Notes and Other Memoranda or Evidences of Premiums Payable as Admissible Assets of Fire and Casualty Insurance Companies.* Premium notes are [shall be] admissible assets for fire and casualty insurance companies only when they meet the following conditions.

(1) Negotiable premium notes [(Commissioner's Order 15333)]

(A) The premium note must be a negotiable instrument (except as provided in paragraph (2) of this section. [In other words,] It must meet the following requirements

(i) be in writing and signed by the insured or insureds,

(ii) contain an unconditional promise or order to pay a sum certain in money;

(iii) [must] be payable on demand, or at a fixed or determinable future time;

(iv) [must] be payable to order or to bearer; and

(v) if the instrument is addressed to a drawee, the drawee must be named or otherwise indicated therein with a reasonable certainty.

(B) The note may contain other provisions not in conflict with subparagraph (A) of this paragraph [the above].

(C) Installment payments must be current according to the conditions recited in the note. An installment will not be considered past due if the payment is

received by and deposited by the company in a bank within 30 days after the due date recited in the note. Premium notes which meet the [above] requirements in subparagraph (A) of this paragraph shall be admitted as assets in an amount not to exceed the semi-monthly unearned premium of the individual policy related thereto. Premium notes or other memoranda or evidences of premiums payable which do not meet those [the above] requirements shall not be admitted in their entirety.

(2) Nonnegotiable premium installments [(Commissioner's Order 32607)]. Notwithstanding paragraph (1)(A) of this rule [Part A above], certain premium installment agreements are [shall be] recognized as admitted assets even though they are not in the form of negotiable promissory notes. Nonnegotiable premium installment agreements which provide for the payment of the balance of the total policy premium after the policy has become effective and which comply with the requirements hereafter set out shall [below should] be admitted as assets of insurers. Such requirements are as follows:

(A) The policyholder must have made some agreement in writing, obligating himself or herself to pay a premium to the insurer according to a payment plan offered by the insurer.

(B) The form of the agreement and the insurer's mode of operation must be such that payments cannot be made to producing agents or field representatives, but only to the home office of the insurer.

(C) Installment payments must be current according to the conditions set forth in the payment plan offered by the insurer. An installment will not be considered past due if the payment is received by and deposited by the insurer in a bank within 15 days after the due date recited in the agreement.

(D) The unpaid premium installments shall be admitted as an asset in an amount not to exceed the semi-monthly unearned premium of the individual policy related thereto.

(E) The words "premium installment agreements" include not only formal documents but also applications for insurance, invoices, exchanges of correspondence, etc., which contain an agreement to pay the policy premium in accordance with a premium plan offered by the insurer.

(3) **Official comment** [Historical explanation in reference to Rule 059.01.15.229]. The **material contained in this paragraph** [following] is historical material which is felt to be important in understanding certain present policies of the [Examination Division of the] State Board of Insurance particularly in reference to paragraphs (1) and (2) of Rule 059.01.15.220. It consists of material which was at one time applicable to the functioning of the **Examination** [such] Division, but is no longer in effect. Companies are **not** [in no way] required to comply with the material contained in this paragraph (3), but are **required to comply with paragraphs (1) and (2)** [therein]. Premium notes and other memoranda or evidences of premiums payable]

(A) The following refers to a board order of February 9, 1956, Commissioner's Order 860 of December 31, 1957, Examination Division Memo 45 of February 26, 1958, and Commissioner's Order 2832

of October 21, 1958. As [the] Commissioner's Order 860 did not treat the matter of the policyholder's signature being required in order to qualify a premium note as an admissible asset, it appears that a number of companies erroneously interpreted that order as a rescission of the board order of February 9, 1956, wherein the board specifically established that the policyholder's signature must appear on the [such] note for it to qualify as an admissible asset. Since it appears that those companies followed such interpretation in good faith, notwithstanding the general dissemination of Memo 45-ED-11, the commissioner has authorized that premium notes and other memoranda or evidences of premiums payable accepted by a company in good faith in connection with the issuance of the company's own policies after the effective date of Commissioner's Order 860 and before the effective date of Commissioner's Order 2832 (i.e., calendar year 1958) shall not be not-admitted as an asset solely because of the absence of the signature of the policyholder.

(B) Under date of October 21, 1958, the commissioner issued his Order 2832 which revokes his Order 860 dated December 31, 1957, effective January 1, 1959. Accordingly, [our] Memo 45-ED-11, concerning premium notes, is [will] likewise [be] ineffective on and after January 1, 1959. A copy of the Commissioner's Order 2832 is available upon request and may be obtained from the Corporate Custodian and Tax Division, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786. The order clearly sets out the treatment to be accorded premium notes as to their admissibility as assets in a company's balance sheet.

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 October 6, 1983

TRD 838138 James W. Norman
Chief Clerk
State Board of Insurance

Earliest possible date of adoption
November 18, 1983

For further information, please call (512) 475-2950.

General Provisions Replacement of Life Insurance

059-21-20-001-007

The State Board of Insurance proposes new Rules 059-21-20-001-007, concerning procedures and requirements for the replacement of certain cash value life insurance and annuities. In the August 5, 1983, issue of the *Texas Register*, the board repealed its existing Rules 059-21-21-004, 006, and 007 concerning the replacement of life insurance (effective August 18, 1983 (Board Order 27700 and amendments)). These rules are similar in some respects to the rules repealed. The major differences between these proposed rules and the repealed rules are that the requirements, for the most part, are greatly reduced. Among other things, a requirement to complete a com-

plicated comparison of policies proposed to be replaced with new policies is deleted, and a "Notice Regarding Replacement" which is required to be given to policyholders whose life insurance is proposed to be replaced is simplified. A requirement added to these rules which was not contained in the repealed rules is that an insurer whose policies or contracts are proposed to be replaced must give notice of the replacement to the agent who originally wrote the policy or contract proposed to be replaced. The types of transactions exempted from the rules are also modified.

Ted Becker, staff actuary (life), A. W. Pogue, Policy Approval Division manager, and Ray Marek, Business Practices Enforcement Division manager, have determined that for the first five year period the rules will be in effect there will be little or no fiscal implications for state or local government as a result of enforcing or administering the rule. Although there will be some increased time spent by State Board of Insurance personnel, no increase in staff is anticipated. There will be a small increase in office supplies and postage, depending on how often board personnel will be involved in enforcing the rules. These proposed rules will have some impact on small businesses. Cost of compliance to insurance companies and insurance agents and agencies is specified in the next paragraph. It is believed the cost on a per hour basis will not vary substantially between small and large businesses.

Messrs. Becker, Pogue, and Marek also have determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be increased awareness of the insurance buying public of the pros and cons of whether or not to replace existing cash value life insurance or annuities. The anticipated economic cost to individuals required to comply with the rules as proposed is determined on a "per replacement" basis. Estimates of the total cost in time and material to agents replacing policies runs from \$5.00 to \$10 per replacement. Estimates from companies run from \$5.00 to \$15 per replacement. The cost per replacement will naturally depend on the administrative practices and diligence of individual companies and agents. The total cost to a particular company or agent will depend very largely on the number of replacements involved.

Comments on the proposal may be submitted to A. W. Pogue, Division Manager, Policy Approval, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

The new rules are proposed under authority of the Texas Insurance Code, Article 21-21, §13, which provides the State Board of Insurance with the authority to promulgate and enforce reasonable rules and regulations in the accomplishment of the purposes of the Texas Insurance Code, Articles 21-20 and 21-21, under the Texas Insurance Code, Article 14-39, pursuant to which the board may promulgate rules and regulations to carry out the purposes of the Texas Insurance Code, Chapter 14, and the Texas Insurance

Code, Article 22.18, which applies Article 21.21 to Chapter 22 companies.

.001. Purpose and Scope.

(a) The purpose of these rules is:

(1) to implement the insurance laws of Texas by regulating certain acts and practices of insurers and agents with respect to replacing cash value life insurance and annuities; and

(2) to aid in protecting the interests of the public in the replacement or proposed replacement of cash value life insurance policies and annuities by reducing the opportunity for misrepresentation and by reducing unfair methods of competition and unfair practices.

(b) Application. These rules apply to all insurers soliciting life and annuity contracts in this state, regardless of size or type of staff and to any solicitation made by them or on their behalf. This includes personal solicitations and solicitations made by newspaper, magazine, radio, television, and direct mail.

.002. Replacement of Cash Value Life Insurance and Annuities Defined.

The replacement of cash value life insurance or annuities is defined as any transaction, not exempted in Rule 059 21.20.003 of these rules (relating to Exemptions) in which a new life insurance or annuity product is to be purchased and it is known to the agent or insurer that, as part of the transaction, existing cash value life insurance or an annuity has been or is to be:

(1) lapsed or surrendered;

(2) converted into paid-up insurance or paid-up annuity, continued as extended term insurance or under another form of nonforfeiture benefit;

(3) converted otherwise so as to effect a reduction either in the amount of the existing cash value life insurance or annuity or in the period of time the existing cash value life insurance or annuity will continue in force;

(4) reissued with a reduction in amount such that substantial cash values are released ("substantial cash values" include all transactions wherein an amount in excess of 50% of the tabular cash value or an amount equal to the annual premium on the new policy, whichever is less, is to be released on one or more of the existing policies), or

(5) assigned as collateral for a loan wherein the amount borrowed on one or more existing policies is sufficient to pay either the first year or subsequent years annual premiums on the new policy or policies.

.003. Exemptions. These rules do not apply when:

(1) the application for the new life insurance or annuities is secured by the same agent and made to the same insurer that issued the existing cash value life insurance or annuity;

(2) the new life insurance or annuity is provided under:

(A) a group life insurance policy or group annuity contract which is issued and does not replace individual policies or contracts and for which there is no individual solicitation of group members made in connection therewith;

(B) policies or contracts covering employees of an employer, debtors of a creditor, or members of an association, which are distributed on a mass merchandising basis and administered by group-type methods; or

(C) life insurance policies or annuity contracts issued in connection with a pension, profit-sharing, or other benefit plan qualifying for tax deductibility of premiums; provided, however, that as to any plan described in this subsection, full and complete disclosure of all material facts shall be given to the administrator of any plan to be replaced;

(3) the policies which would be affected by the replacement constitute industrial insurance as defined in the Texas Insurance Code, Article 3.52;

(4) the policy has no cash values;

(5) the total cash value of all existing policies which would be affected by the replacement is less than \$500 and the sum of their face amounts is \$5,000 or less; or

(6) the solicitation is made by direct mail and all sales material is standard and printed, provided, however, that the insurance company shall be required to notify the existing insurance company promptly of the fact that the proposed insured has answered "yes" to the replacement question in the application and shall promptly mail to the applicant a copy of the "Notice Regarding Replacement" specified in Rule 059 21.20.007 of these rules (relating to Notice Regarding Replacement); in this instance, there is no need to include the signature line for the agent or applicant on the "Notice Regarding Replacement."

.004. Duties of Agent. Each agent shall:

(1) obtain with or as a part of each application for life insurance or annuity a statement signed by the applicant as to whether such insurance or annuity will replace any existing cash value life insurance or annuity;

(2) submit to the insurer in connection with each application for life insurance or annuity a statement as to whether, to the best of his or her knowledge, replacement of cash value life insurance or annuity is involved in the transaction; and

(3) where a replacement of cash value life insurance or annuity is involved:

(A) obtain with or as a part of each application a list of all existing cash value life insurance policies or annuity contracts proposed to be replaced and the name of the insurers whose policies or contracts are proposed to be replaced;

(B) present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form specified in Rule 059 21.20.007 of these rules (relating to Notice Regarding Replacement) and leave such form with the applicant for his or her records; and

(C) have the applicant sign the "Notice Regarding Replacement" specified in Rule 059 21.20.007 of these rules (relating to Notice Regarding Replacement).

.005. Duties of Insurers.

(a) Each replacing insurer shall:

(1) inform its field representatives of the requirements of these rules;

(2) require with or as a part of each application for life insurance or annuity a statement signed by the applicant as to whether such insurance or annuity will replace existing cash value life insurance or an annuity;

(3) require in connection with each application for life insurance or annuity a statement signed by the

agent as to whether, to the best of his or her knowledge, replacement of cash value life insurance or annuity is involved in the transaction; and

(4) where a replacement of cash value life insurance or annuity is involved:

(A) require with or as a part of each application a list prepared by the agent representing to the best of his or her knowledge all of the existing cash value life insurance or annuity contracts proposed to be replaced;

(B) obtain a signed "Notice Regarding Replacement," specified in Rule 059.21.20.007 of these rules (relating to Notice Regarding Replacement);

(C) within five working days of the date the application is received in the replacing insurer's home or regional office, give notice to any insurer whose cash value life insurance or annuity is proposed to be replaced of the specific policy or contract being replaced, and

(D) maintain in a central file copies of the "Notice Regarding Replacement" specified in Rule 059.21.20.007 of these rules (relating to Notice Regarding Replacement) and the applicant's signed statement with respect to replacement in its home office for at least three years or until the conclusion of the next succeeding regular examination by the insurance department of its state of domicile, whichever is later. Any insurer which receives notice that its existing cash value life insurance or an annuity may be replaced shall maintain copies of such notification on its premises, indexed by insurer notifying it of such replacement, for three years or until the conclusion of the next regular examination conducted by the insurance department of its state of domicile, whichever is later.

(b) Each insurer whose policy is proposed to be replaced shall notify its agent who originally sold the policy. If the agent is no longer its agent and the insurer cannot locate the agent, the insurer may forward notice to the agent's last known address.

.006 Penalties

(a) Any insurer, agent, representative, officer, or employee of such insurer failing to comply with the requirements of these rules is subject to such penalties as are appropriate under the Texas Insurance Code.

(b) Policy or contract holders or owners may replace existing cash value life insurance or annuities after indicating in or as a part of application for new life insurance or an annuity that such is not their intention, however, patterns of such action by policy or contract holders or owners of the same insurer or agent or both are *prima facie* evidence of the insurer's or agent's knowledge that replacement was intended in connection with such transactions, and such patterns of action are deemed *prima facie* evidence of the insurer's or agent's intent to violate these rules.

.007. Notice Regarding Replacement The following "Notice Regarding Replacement" is adopted as a part of and for use with these rules.

**"Notice Regarding Replacement
Replacing Your Cash Value Life
Insurance Policy or Annuity?"
(heading in caps)**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one - or a mistake. You may not know for sure unless you make a careful comparison of your existing benefits and the proposed benefits.

Make sure you understand the facts. It may be to your advantage to ask the company or agent that sold you your existing policy to give you information about it.

We are required by law to notify your existing company and your existing company is required to notify the agent who sold you your existing policy that you may be replacing their policy.

Applicant's Signature	Date	Agent's Signature"
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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 October 11, 1983.

TRD-838152	James W. Norman Chief Clerk State Board of Insurance
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Earliest possible date of adoption
November 18, 1983

For further information, please call (512) 475-2950.

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

34 TAC 43.299

The Comptroller of Public Accounts proposes amendments to 43.299 concerning newspapers, magazines, publishers, sacred writings, and broadcasted. The amendments expand the definition of "newspaper" to include publications distributed by licensed and certified carriers to customers traveling on the carriers. This exemption was added to the Texas Tax Code, §151.319, by House Bill 1122, effective August 29, 1983.

Billy Hamilton, director of revenue estimating for the comptroller, 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 probable revenue loss to the state from implementing the provisions of the bill in the next five years will be \$5,600 in 1984, \$6,100 in 1985, \$6,500 in 1986, \$7,000 in 1987, and \$7,400 in 1988. The probable revenue loss to local governments will be \$1,500 in 1984, \$1,640 in 1985, \$1,760 in 1986, \$1,890 in 1987, and \$2,010 in 1988. In addition to the above losses, the state would lose a negligible amount in administrative fees because of reduced

tions in MTA and city sales taxes

Similar fiscal effects are expected as long as the new rule is in effect.

Mr. Hamilton has also determined that anticipated public benefit would be savings for the publishers of magazines to be distributed free of charge on any certified public carrier from not having to pay sales tax on those magazines. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal should be submitted to D. Carolyn Busch, P O Box 13528, Austin, Texas 78711

These amendments are proposed under the authority of the 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.

§3.299. Newspapers, Magazines, Publishers, Sacred Writing, Broadcasters

(a) Newspapers

(b) (No change.)

(2) "Newspaper" also includes a publication containing articles and essays of general interest by various writers and advertisements which is produced for the operator of a licensed and certificated carrier of persons and distributed by the operator to its customers during their travel on the carrier.

(3)(C) The term "newspaper" does not include magazines, handbills, circulars, flyers, sales catalogs, or the like, unless the [such] items are distributed as part of a publication which itself constitutes a newspaper and further provided that the [such] items, after being printed, are delivered by the printer to the person responsible for the distribution of the newspaper.

(4)(C) The sale, use, storage, or other consumption in this state of newspaper, whether sold or given away without charge [distributed] by individual copy or subscription, is exempt from sales tax.

(b) (c) (No change.)

(d) Sacred writings. The receipts from the sale or use in this state of books consisting wholly of writings sacred to any religious faith, and religious periodicals published or distributed by any religious faith consisting wholly of writings promulgating the teaching of such faith, or audio electronic transcriptions of this [such] material are exempt from the sales tax. The exemption for publications and books sacred to a particular faith does not extend to sheet music and films.

(e) (No change.)

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

Issued in Austin, Texas, on October 12, 1983

TRD 838166 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption
November 18, 1983

For further information, please call (512) 475-3852

**Subchapter T. Motor Vehicle Sales Tax
Division — Manufactured Housing
Sales and Use Tax**

34 TAC §3.485

The Comptroller of Public Accounts proposes an amendment to §3.485, relating to interstate sales of manufactured housing. This amendment is proposed to reflect the change in the Tax Code enacted in Senate Bill 594, 68th Legislature, 1983, effective May 10, 1983. This amendment will exempt from sales tax any manufactured home which is sold to a retailer for resale to a resident of another state if the home is then transported and installed on a homesite located in another state.

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

Mr. Hamilton also determined that the public benefit anticipated from this change will be that this amendment will make rules governing interstate sales of manufactured homes by retailers consistent with rules currently governing interstate sales of manufactured homes by manufacturers. There may be some fiscal savings to individuals due to equalization of treatment of manufacturers.

Comments should be submitted in writing to Richard Montgomery, P O Box 13528, Austin, Texas 78711

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

§3.485. Interstate Sales of Manufactured Housing.

(a) A manufacturer engaged in business in Texas but located outside this state must collect and remit to the comptroller the manufactured housing sales tax [imposed by Texas Tax Code, Chapter 158,] on the initial sale, shipment, or consignment of a manufactured home to a retailer or other person in this state.

(b) (No change.)

(c) The sales tax is not imposed on a manufactured home that is sold to a Texas retailer for resale at retail to a resident of another state if the home is transported to and installed for occupancy on a homesite located in another state.

(1) This exemption does not apply if the home is titled or registered in Texas or if the home is used for any purpose other than display prior to being transported outside of the state.

(2) The manufacturer may accept an exemption certificate which has been signed and completed by the retailer and the consumer in compliance with §3.483 of this title (relating to Exemption Certificates).

(3) A retailer who has previously paid the sales tax imposed by this chapter to the manufacturer on a

transaction exempt under this section may claim a credit or a refund from the manufacturer.

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 October 12, 1983.

TRD-838167 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption:
November 18, 1983

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

§83.13. *Investment Advisor.*

§83.15. *Investment Advisory Committee.*

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 October 7, 1983.

TRD-838099 Clayton T. Garrison
Executive Director
Employees Retirement System of
Texas

Earliest possible date of adoption:
November 18, 1983

For further information, please call (512) 476-6431.

Part IV. Employees Retirement System of Texas

Chapter 83. Investment Policies

34 TAC §§83.1, 83.3, 83.5, 83.7, 83.9, 83.11, 83.13, 83.15

Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Employees Retirement System of Texas, 18th and Brazos Streets, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin 1.

The Employees Retirement System of Texas proposes the repeal of §§83.1, 83.3, 83.5, 83.7, 83.9, 83.11, 83.13, and 83.15 concerning investment policies.

Everard C. Davenport, general counsel, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of the repeal.

Mr. Davenport also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be the elimination of unnecessary rules which govern the internal operations of the Employees Retirement System. Repealed rules, as proposed, have been replaced by a comprehensive investment policy adopted by the Board of Trustees at their September 26, 1983, meeting. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Everard C. Davenport, General Counsel, Employees Retirement System of Texas, 18th and Brazos Streets, P.O. Box 13207, Austin, Texas 78711.

The repeal is proposed under Texas Civil Statutes, Title 110B, §25.102(2), which provides the Employees Retirement System of Texas with the authority to adopt rules for the administration of the funds of the retirement system.

- §83.1. *Investment Objectives.*
- §83.3. *Authority of Executive Director.*
- §83.5. *Stock Transactions -- Board Approval.*
- §83.7. *Operating Procedures.*
- §83.9. *Purchase Requirements.*
- §83.11. *Bond Exchange.*

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement Accident Investigation

37 TAC §3.8

The Texas Department of Public Safety proposes an amendment to §3.8, concerning accident reporting by involved drivers. A statutory amendment effective January 1, 1984, requires rule amendment by revising subsection (b) amending the driver's confidential accident report, which is adopted by reference. Appropriate instructions are added to the driver's confidential accident report for when a driver should submit a report.

Melvin C. Peeples, chief accountant II, 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 reduction in cost of \$22,000 for fiscal year 1984, \$62,000 for fiscal year 1985, and \$73,000 each year for fiscal years 1986-1988. There is no anticipated fiscal implication for local government.

Michael Anderson, statistical services manager, has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be that drivers involved in motor vehicle accidents, defined by statute as reportable, will no longer be required to submit a written report when the accident is investigated by a law enforcement officer unless specifically required by authority of Texas Civil Statutes, Article 6701h, §4. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §44 and §45, and Article 6701h, §4, as amended, which provides the Texas Department of Public Safety with the authority to require drivers involved in a reportable accident not investigated by a law enforcement officer to submit a written report of such accident to the department within 10 days from the date of the accident.

§3.8. *Reporting by Involved Drivers.*

(a) (No change.)

(b) The attached report, driver's confidential accident report, as amended in **January 1984** [August 1977], is adopted by reference and lists sufficiently detailed information regarding involvement in a traffic accident.

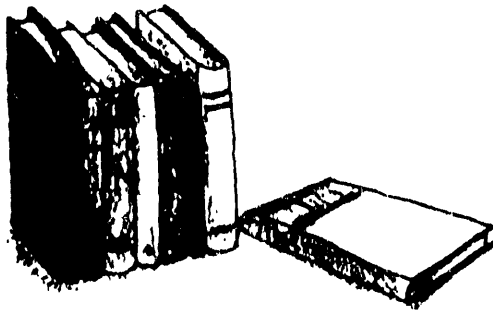
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt

Issued in Austin, Texas, on October 6, 1983

TRD-838082 James B. Adams
Director
Texas Department of Public
Safety

Earliest possible date of adoption
November 18, 1983

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

Chapter 8. HEAP

Program Administration

40 TAC §8.907

The Texas Department of Human Resources proposes an amendment to §8.907, concerning heating assistance in the Home Energy Assistance Program (HEAP).

The department is amending §8.907 because the basis for each year's income caps is being changed. The rule currently states that a household's income may not exceed 75% of the Bureau of Labor Statistics lower living standard in effect at the time of eligibility determination. Because the bureau no longer publishes its annual index, the department is recommending that the 1981 Bureau of Labor Statistics lower living standard be increased by the October 1981 through Oc-

tober 1982 percentage increase in the Consumer Price Index for Houston. All other aspects of the fiscal year 1984 program will be the same as the fiscal year 1983 program. The gross monthly income levels for the fiscal year 1984 program year are:

Household	Size	Income
1		\$ 355.49
2		581.49
3		798.49
4		985.49
5		1,162.49
6		1,359.49

Additional gross monthly income levels for household size are available on request.

David Hawes, programs budget and statistics director, has determined that for the first five years the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule

Mr. Hawes has also determined that for each year of the first five years the rule as proposed is in effect the public benefit will be a clearer understanding of how the department determines income caps for households. There is no anticipated economic cost to individuals required to comply with the rule as proposed

Written comments are invited and may be sent to Susan L. Johnson, Administrator, Policy Development Support Division 637, Texas Department of Human Resources 153 B, P. O. Box 2960, Austin, Texas 78769, within 30 days of publication in this Register

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs

§8.907 *Eligibility Requirements.*

(a) (No change)

(b) Income For HEAP heating assistance, the household's income is its gross income (without any deductions) as determined by the household's AFDC, food stamp, SSI, or Veterans Administration worker. To meet the income requirement, a household's income may not exceed 75% of the Bureau of Labor Statistics lower living standard as updated by the October 1981 to October 1982 percentage change in the Consumer Price Index for Houston [in effect at the time of eligibility determination]

(c)-(d) (No change)

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

Issued in Austin, Texas, on October 11, 1983

TRD 838142 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption:
November 18, 1983

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

Chapter 47. Primary Home Care Provider Contracts

40 TAC §47.4901

The Texas Department of Human Resources proposes an amendment to §47.4901, concerning contracting to provide primary home care services in its Primary Home Care Program rules.

At a recent Medicaid state assessment of primary home care, representatives of the Health Care Financing Administration (HCFA) asked the department to reword §47.4901. The rule is being amended to delete "agency" and replace it with "a legal entity or one of its divisions." As used in federal government terminology, "agency" means a place of business. The department, therefore, is proposing the amendment to be responsive to HCFA's recommendation.

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

Mr. Hawes has also determined that for each year of the first five years the amendment as proposed is in effect the public benefit will be clarification of agency policy. There are no anticipated economic costs to persons required to comply with the rule.

Written comments are invited and may be sent to Susan L. Johnson, Administrator, Policy Development Support Division-622, Texas Department of Human Resources 153-B, P. O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

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

§47.4901. Contracting. To contract with the Texas Department of Human Resources to provide primary home care services, a **legal entity or one of its divisions** [an agency] must:

(1)-(2) (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 October 11, 1983.

TRD-838141

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Earliest possible date of adoption:
November 18, 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 16. ECONOMIC REGULATION Part II. Public Utility Commission of Texas Chapter 23. Substantive Rules Rates

16 TAC §23.23

The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption amendments to §23.23, concerning rates. The text of the amended section as proposed appeared in the September 9, 1983, issue of the *Texas Register* (8 TexReg 3572).

Issued in Austin, Texas, on October 6, 1983.

TRD 838072 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Filed: October 7, 1983
For further information, please call (512) 458-0100.

Special Rules

16 TAC §23.51

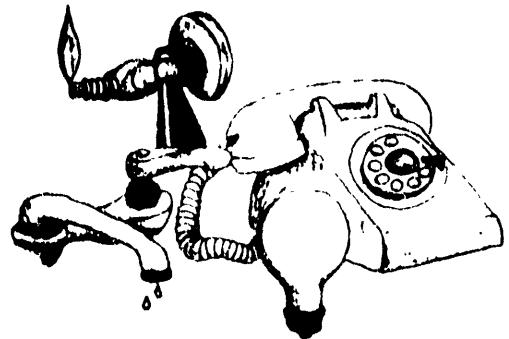
The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption amend-

ments to §23.51, concerning special rules. The text of the amended section as proposed appeared in the September 16, 1983, issue of the *Texas Register* (8 TexReg 3650).

Issued in Austin, Texas, on October 6, 1983.

TRD 838073 Rhonda Colbert Ryan
Secretary of the Commission
Public Utility Commission of
Texas

Filed: October 7, 1983
For further information, please call (512) 458-0100.



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.

Adopted Rules

TITLE 4. AGRICULTURE Part 1. Texas Department of Agriculture Chapter 25. Agricultural Development Board Subchapter A. General Provisions

4 TAC §§25.125-9, 25.12

The Agricultural Development Board adopts new §§25.125-9, 25.12, 25.31, 25.32, 25.51, 25.58, 25.71, 25.82, 25.101, 25.102, 25.111, 25.131, 25.141, 25.151, 25.152, 25.161, and 25.171, with changes to the proposed text published in the July 29, 1983, issue of the *Texas Register* (8 TexReg 2840).

These rules are required under the Agricultural Development Act of 1983 to implement the bond program by specifying the process leading to board approval for the issuance of bonds by local development corporations. The establishment of the bond program is anticipated by department staff to result in several significant public benefits, as follows:

- (1) expansion of agricultural markets for Texas producers,
- (2) diversification of the farm income base and stabilization of local agriculture,
- (3) availability of loans to enhance agricultural development,
- (4) direct involvement and control by agricultural producers in the intermediate and/or final steps necessary to prepare their own products for consumption by the general public, thereby increasing the producers' share of the consumer dollar, and
- (5) creation of jobs, enhancement and stabilization

of local and rural economies, and increase of the local and state tax bases.

To display procedures succinctly, the department's staff made minor editorial changes to the adopted rules. The changes were made to correct punctuation and to delete unnecessary terminology. The staff made no substantive changes to the rules. The Agricultural Development Board met in a public meeting on October 7, 1983, and adopted the rules.

These rules implement the statewide bond program authorized under the Agricultural Development Act of 1983 by describing the procedures and conditions necessary for local development corporations to obtain approval from the Agricultural Development Board for the issuance of bonds. The tax exempt bonds, in turn, provide loans at a favorable rate to allow and encourage Texas agricultural producers to become directly involved in the processing, packaging, and marketing of their own agricultural goods.

No comments were received expressing approval or disapproval of the rules. A public hearing was held on August 9, 1983, which was attended by representatives from several organizations who were seeking information. No one expressed any opinion concerning the rules.

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

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

Act—The Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983

Agricultural enterprise—A business or industry that processes, prepares, refines, converts, packages, grades or labels, ships, or markets agricultural products or by-products, or that uses farm or forest products or by-products in the manufacture of other finished or intermediate goods. The term includes businesses and industries related to agriculture, including businesses providing transportation, assembly, packaging, processing, and marketing of agricultural products, grain elevators, shipping heads, livestock pens, warehouses, and wharf and dock facilities.

Agricultural product—An agricultural, horticultural, viticultural, or vegetable product, bees and honey, fish and other seafood, planting seed, livestock or livestock product, or poultry or poultry product produced in this state either in its natural state or as processed by the producer.

Applicant—A person filing an application.

Application—An application, including supporting and supplemental instruments and documentation, for approval of a loan, lease, or sale agreement for a facility, or for approval of a Loans to Lending Institutions Program, and for authority to deliver bonds under the Act.

Board—The Agricultural Development Board established under §4 of the Act.

Board of directors—The board of directors of a corporation.

Bond—A bond, note, debenture, or interim certificate. The term includes a bond, grant, revenue anticipation note, or any other evidence of indebtedness of a corporation issued under the Act.

Bond guarantor—A person or agency acceptable to the board guaranteeing or insuring the payment of principal or interest to any holder of bonds issued under the Act.

Commissioner—The Texas Commissioner of Agriculture.

Conditional approval—The approval of a proposed issue made conditional upon certain specified future actions of the applicant, as determined by the board.

Corporation—A public nonprofit corporation organized under the Act.

Cost—All reasonable or necessary costs, as defined in §3 of the Act, incidental to the provision, acquisition, construction, reconstruction, rehabilitation, repair, alteration, improvement, and extension of an agricultural enterprise or facility.

County—A political subdivision of the State of Texas created and established under the Texas Constitution, Article IX, §1, or a combination of counties.

Department—The Texas Department of Agriculture.

Facility—Any real or personal property, or an interest in the property, the financing, refinancing, acquiring, providing, constructing, enlarging, remodeling, renovating, improving, furnishing, or equipping of which is determined by the board of directors of a corporation to be necessary or convenient for an agricultural enterprise in this state.

Final approval—The final approval of an applica-

tion, including the final satisfaction of all conditions of a conditional approval issued by the board.

Lending institution—A bank, trust company, savings bank, national banking association, savings and loan association, mortgage banker, mortgage company, credit union, life insurance company, or other financial institution or governmental agency that customarily provides services or aids in the financing of agricultural loans or mortgages, or a holding company of any of those institutions.

Loan guarantor—A loan insurer or any other person acceptable to the board guaranteeing or insuring to a corporation a user's payments under a lease, sale, or loan agreement approved under the Act.

Loan insurer—An agency, department, administration, or instrumentality in the Department of Housing and Urban Development, the Farmers Home Administration of the Department of Agriculture, or the Veterans Administration of the United States of America, a private mortgage insurance company, or another agency that insures or guarantees loans.

Loans to Lending Institutions Program—A program established under the Act which, through the issuance of bonds, makes funds available to lending institutions for financing of facilities.

Participating lender—A lending institution applying for funding under a Loans to Lending Institutions Program, which is acceptable to the corporation involved and to the board.

Person—An individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Primary user—The person who operates a facility pursuant to a lease, sale, or loan agreement with a corporation or who is primarily obligated to make required payments to the corporation under a lease, sale, or loan agreement.

Resolution—A resolution passed by a board of directors.

Rule—A rule of the board, as defined in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended.

Staff—The staff of the department.

User—A person who is a user of a facility, including a primary user.

§25.2 Purpose—The purpose of these rules is to provide standards of eligibility and procedures for applications for approval of facilities and financing under the Act, in order to allow agricultural producers to become directly involved in processing, packaging, and marketing agricultural products.

§25.3 Eligibility—To be eligible for assistance from a corporation, an agricultural enterprise

(1) must be a cooperative organized under the Texas Agriculture Code, Chapter 51 or 52, or under federal law, an individual agricultural producer, or a partnership, a corporation, or a joint venture by any of those organizations, and

(2) must have at least 50% of its ownership, partnership holdings, assets, or outstanding stock owned or controlled by agricultural producers who provide or plan to provide agricultural products or by-products as raw

material, feedstock, commodities, or intermediate goods to be processed, prepared, refined, converted, packaged, graded or labeled, shipped, marketed, or used in the manufacture of other finished or intermediate products

§25.4. Scope and Applicability The board will apply these rules to all applications filed with the board under the Act. The board may waive the applicability of any rule to an application when such waiver would be in the public interest and would further the purposes of the Act

§25.5. The Board The board will hold meetings and hearings, promulgate rules, and conduct business in accordance with all applicable laws, these rules, and any procedure it may establish to discharge its functions

§25.6. Administration The board may delegate appropriate functions to the staff in order to carry out the purposes of all applicable laws and of these rules in the day-to-day conduct of the board's business

§25.7. Written Communications A person shall address written communication with the board to the Agricultural Development Board, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711

§25.8. Statements and Opinions Statements and opinions of the board or staff, other than formal orders and rules, are not binding in any way on the board or staff

§25.9. Apportionment of Expense The board may apportion the expenses of conducting contested cases among any parties or other participants when the board determines that such apportionment would be in the public interest and would further the purposes of the Act

§25.12. Practice and Procedure The board shall conduct all rulemaking and contested case proceedings in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as amended, and in accordance with the rules of Chapter 1 of this part (relating to General Practice and Procedure), to the extent not inconsistent with the rules of this Chapter 25

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 October 11, 1983
TRD 838107 Jim Hightower
Commissioner
Texas Department of Agriculture

Effective date: November 1, 1983
Proposal publication date: July 29, 1983
For further information, please call (512) 475 6346

Subchapter B. Corporation Filings

4 TAC §§25.31, §25.32

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act

§25.31. Notification of Board

(a) Upon receipt of a certificate of incorporation

from the secretary of state, a corporation shall file a notice with the board listing the following

- (1) the name and address of the corporation,
 - (2) the names and addresses of the directors and officers of the corporation, and
 - (3) all counties served by the corporation
- (b) Upon the change of any information contained in the notice, a corporation shall file a supplemental notice with the board stating the change

§25.32. Corporate Procedures and Fee Schedule

(a) **Written procedure** Each corporation shall adopt and file with the board written procedures for the submission of loan applications and for the adoption of resolutions required in §25.74(2) of this chapter (relating to The Corporation)

(b) **Fee schedule** Each corporation shall adopt and file with the board a current fee schedule of all fees charged by, collected by, or otherwise involved with the corporation, directly or indirectly, in the application for approval to issue bonds under the Act

(c) **Amendments** Each corporation's written procedures and fee schedule may be revised or amended by the filing of revisions or amendments with the board.

(d) **Effective dates** All written procedures and fee schedules of a corporation, as well as all applicable revisions and amendments, become effective upon filing with the board

(e) **Necessity for filing** The proper and timely filing of a corporation's written procedures and current fee schedule, or applicable revisions or amendments, are preconditions of board approval of an application involving the corporation. The board may waive such preconditions in the issuance of conditional approval of an application, as it finds necessary and appropriate, but will not waive such preconditions in the issuance of final approval

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

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Subchapter C. Applications in General: Filing Requirements

4 TAC §§25.51-25.58

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act

§25.51. Notification of Intention To File In order to be placed on the agenda of a board meeting, the applicant must notify the board of its intention to file an application at least 30 days before the day of the next

meeting at which the board could schedule the application for consideration

§25.52. *Form* An application must be filed on letter-sized paper and must contain all information and documentation required under Subchapter D of this chapter (relating to Facility Bonds: Contents of Application) or Subchapter G of this chapter (relating to Loans to Lending Institutions Program Bonds: Contents of Application), as applicable

§25.53. *Filing and Fee* An applicant shall file with the board an original and four copies of each application together with a nonrefundable \$1,500 filing fee in the form of a check or money order made payable to the department

§25.54. *Completeness* Each application must be as complete as practicable and without the need for subsequent addendum or supplementation. If an application is not complete, the board may deny the application, require or allow supplementation of the application, or make such other disposition as may be appropriate

§25.55. *Fish and Other Seafood Products* An applicant shall file an additional copy of any application relating to fish and other seafood products as required under §5(b) of the Act with the Texas Parks and Wildlife Commission. It is the applicant's duty to obtain approval by the Texas Parks and Wildlife Commission and to supply the board with a copy of that approval

§25.56. *Amendment* After filing an appropriate request for amendment and receiving board approval of that request, an applicant may amend any application, including one that has received final approval. The applicant shall file such amendments with the board and, if applicable under §25.55 of this chapter (relating to Fish and Other Seafood Products), with the Texas Parks and Wildlife Commission

§25.57. *Board Disposition of Application* The applicant must file the application with the board at least seven days before the day of the meeting at which the application has been scheduled for consideration, as provided in §25.51 of this chapter (relating to Notification of Intention To File). At the meeting, the board will either approve the application conditionally, disapprove it, remand it to the applicant for further action, or make such other disposition of the application as may be appropriate

§25.58. *Transcript of Proceedings* A complete transcript of all proceedings relating to the authorization, issuance, sale, and delivery of the bonds must be bound as a permanent record, spine labeled as to issue, amount, and date, and submitted to the board within 60 days after the bond closing. The binding must be of such quality as will preserve the enclosures for the term of the bonds. In the event the transcript cannot be delivered within the 60-day period, the board may grant an extension upon request. This requirement is not a precondition to final approval by the board

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 October 11, 1983

TRD 838109 Jim Hightower
Commissioner
Texas Department of Agriculture

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Subchapter D. Facility Bonds: Contents of Application

4 TAC §§25.71-25.82

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

§25.71. *Applicability* In order to qualify for board approval of bonds to be issued for the purpose of providing a facility, each application must contain all information and documentation required under this subchapter, as applicable.

§25.72. *General Information* The application must contain the following general information and documents:

- (1) a brief description of the proposed facility, its location, its intended use, and its intended users;
- (2) the total cost of the facility and estimated time of completion, together with copies of any relevant engineering study, design study, cost estimation, or feasibility study which may be available; and
- (3) a description of the favorable and adverse impact the facility and operations are expected to have on all relevant agricultural producers and agricultural markets. The description must have as an attachment comments, evidence, and testimony received by the applicant favoring or opposing the proposed facility, or a summary of such comments, evidence, and testimony.

§25.73. *Participants* The application must list the name, street, mailing address, and telephone number of each of the following persons involved in the facility and its financing:

- (1) the corporation, the corporation's representative, and the corporation's counsel;
- (2) the primary user of the facility;
- (3) all other users of the facility;
- (4) the original purchaser of the bonds, the purchaser's representative, and the purchaser's counsel;
- (5) the loan guarantor, the guarantor's representative, the guarantor's counsel, and the guarantor's accounting firm;
- (6) the bond guarantor, the guarantor's representative, the guarantor's counsel, and the guarantor's accounting firm;
- (7) the financial advisor or placement agent, the advisor's or agent's representative, and the advisor's or agent's counsel;

(8) the underwriter, the underwriter's representative, and the underwriter's counsel,

(9) the trustee or depository, the trustee's or depository's representative, and the trustee's or depository's counsel,

(10) the paying agent, the agent's representative, and the agent's counsel,

(11) the registrar, the registrar's representative, and the registrar's counsel, and

(12) the bond counsel

§25 74 The Corporation The application must contain the following information and documentation concerning the corporation

(1) Description of corporation

(A) the name, street address, and mailing address of the corporation, and date of its incorporation;

(B) a list of all counties served by the corporation, and

(C) the name, street address, and mailing address of each of the directors

(2) Resolution of corporation A certified copy of the resolution of the board of directors approving the proposed facility and its financing under the Act, containing the following

(A) appropriate findings that the facility is proper for financing under the Act and that it is necessary or convenient for an agricultural enterprise in this state; these findings may be based upon reasonable reliance on representations of the users and must include

(i) a description of the business organization of the applicant and a finding that all users are eligible entities under §5 of the Act,

(ii) a description of the proposed facility and a finding that it qualifies under §3(9) of the Act,

(iii) a description of the agricultural products involved in the operation of the proposed facility and a finding that the agricultural products are within the definition of §3(2) of the Act,

(iv) a description of the operation of the proposed facility and a finding that the operation will constitute a proper agricultural enterprise under §3(1) of the Act,

(v) a finding that the primary user has no present intention of disposing of, abandoning, or transferring control of the proposed facility,

(vi) a finding that the primary user has no present intention of directing the proposed facility to a use other than the purposes represented to the corporation;

(vii) a description of the method of financing the proposed facility,

(viii) a finding that the proposed facility will further the ability of agricultural producers of this state to become involved in processing, packaging, or marketing agricultural products,

(ix) a description of the favorable and adverse impact of the proposed facility on agricultural producers and agricultural markets in this state;

(x) a finding that bond counsel and the financial advisors participating in a bond issue are mutually acceptable to the corporation and the primary user, and

(xi) any other information and data deemed necessary by the corporation to demonstrate the need for

the proposed facility and for its financing under the Act, and

(B) at the corporation's discretion, any covenants, conditions, and provisions allowed by the Act, and

(3) Proposed opinion of corporation counsel A proposed opinion of counsel for the corporation, in substantially the form to be delivered at closing, as to the following

(A) the validity of the incorporation and existence of the corporation,

(B) the legal authority for the actions and other proceedings of the corporation in connection with the proposed facility and the bonds, and

(C) the fact that the lease, sale, or loan agreement financing the proposed facility constitutes a legal and binding obligation of the corporation

(4) Transcript of corporate proceedings At the discretion of the corporation, a transcript of proceedings before the corporation regarding the application and a request by the corporation that the application be approved by the board

§25 75 Facility and Costs The application must contain the following information and documents concerning the proposed facility and related costs

(1) a description of the facility, its operation, and the agricultural products involved in the operation,

(2) a description of the final products of the facility, the anticipated market for those products, and the marketing plan showing proposed methods of distribution, target customer base, and evidence of consumer need or acceptance,

(3) a statement of the present ownership of the facility, including a description of any liens and encumbrances on the facility,

(4) evidence, satisfactory to the board, that

(A) a sufficient work force is or will be available locally,

(B) all necessary interests in real property required for the construction and operation of the facility have been or can be acquired,

(C) all necessary transportation access, utilities, drainage, and waste disposal facilities have been or will be provided, and

(D) all approvals, permits, consents, and authorizations of any governmental or public agency, authority, or person required in connection with the construction and operation of the facility have been or will be obtained,

(5) if an urban development action grant is to be used for provision of related utilities, costs, or services, evidence of the commitment of such funds,

(6) if an existing facility is to be renovated, a description of such renovations,

(7) a detailed description of the following items of the facility and a statement of the actual cost or, if unavailable, the estimated cost of each of the following:

(A) acquiring all land, rights-of-way, options to purchase land, easements, leasehold estates in land, and interests of any kind in land relating to agricultural enterprises or facilities,

(B) acquiring, constructing, repairing, renovating, remodeling, improving, financing, demolishing, reconstructing, purchasing equipment for, or developing

sites for new and rehabilitated buildings and structures to be used as, or in conjunction with, an agricultural enterprise or facility;

(C) relocating utilities, public ways, and parks;

(D) studies and surveys; plans and specifications; architectural, legal, and engineering services; financial advisory, mortgage banking, and administrative services; underwriting services; and accounting, marketing, and other special services relating to an agricultural enterprise or facility;

(E) expenses incurred in connection with the issuance, approval, qualification, or sale of bonds;

(F) fees for applying to federal, state, and local government agencies for approval of construction or assisted financing;

(G) machinery, equipment, furnishings, and facilities necessary or incident to an agricultural enterprise;

(H) financing charges and interest on construction costs incurred before and during construction and for a maximum of two years after completion of construction, including the costs of initial inventory, raw material, feedstock, commodity, or intermediate goods;

(I) appraisal fees, expenses, and disbursements;

(J) an insurance policy or policies, including title, casualty, or liability insurance;

(K) printing, engraving, and reproduction services;

(L) fees of a trustee, paying agent, or registrar;

(M) the amount of an initial bond and interest reserve;

(N) the amount of any other reserve or contingency fund;

(O) all direct and indirect expenses of the corporation incurred in connection with the agricultural enterprise or facility; and

(P) other fees and expenses that the corporation determines are necessary to effectuate the purposes of the Act, including sufficient sums to reimburse the corporation for time spent by its agents and employees; and

(8) the anticipated date of commencement of construction and estimated date of completion of the facility.

§25.76. Users of the Facility. The application must contain the following information and documents concerning the users of the facility:

(1) Primary user:

(A) its name, address, and principal place of business;

(B) the form of business organization, specifying whether it is a proprietorship, partnership, corporation, or cooperative;

(C) the state or other jurisdiction of incorporation or organization, and a complete description of the organizational structure, including parent, subsidiaries, and affiliates;

(D) a statement of the history and type of businesses engaged in by the primary user;

(E) the names and titles of executive or managing officers and directors and a history of the education and business experience of each such officer or director,

including his principal occupation and employment history;

(F) a statement of its debt security rating or listing by any published rating agency, if any;

(G) a current financial statement and financial statements for the previous three years, acceptable to the board;

(H) at the discretion of the primary user, in place of subparagraphs (C)-(G) of this paragraph, copies of primary user's Form 10-K and copies of primary user's most recent Form 10-Q;

(I) if the primary user is a newly organized entity or has been in existence for less than three years, the following information in place of subparagraphs (F)-(H) of this paragraph:

(i) financial statements for any years for which the information is available;

(ii) individual financial statements of each party composing the primary user for the previous three years;

(iii) projections of direct and indirect expenses and income for the first year of operation; and

(iv) a letter of recommendation from a lending institution, excluding the bond purchaser;

(J) if the primary user is a partnership or joint venture, a listing of the names, addresses, and principal places of business of all partners or joint venturers, and a statement of any contractual relationships between partners or joint ventures as it affects eligibility under §5 of the Act; and

(K) if the primary user is a cooperative, or a joint venture which includes a cooperative, a listing of the names, addresses, and principal places of business of all members of the cooperative, and a copy of any relevant marketing agreement of the cooperative with its members.

(2) Affidavit of use. An affidavit containing evidence acceptable to the board in which the primary user states that:

(A) the primary user is a bona fide eligible entity under §5 of the Act;

(B) the facility will be used for an agricultural enterprise as defined in §3(1) of the Act;

(C) the primary user has no present intention of disposing of, abandoning or transferring control of the facility;

(D) the primary user has no present intention of directing the facility to a use other than the purposes stated in the application; and

(E) the primary user does not intend to substantially alter its legal character in any way which would affect its eligibility under §5 of the Act.

(3) Proposed opinion of counsel to primary user. A proposed opinion of counsel to the primary user, in substantially the form to be delivered at closing, as to the following:

(A) the validity of the creation and existence of the primary user;

(B) the authority of the actions and other proceedings of the primary user in connection with the facility and the bonds; and

(C) the fact that the lease, sale, or loan agreement constitutes a legal and binding obligation of the

primary user.

(4) Other users. If there are any anticipated users of the facility other than the primary user, the following information provided by the primary user for each of the other users:

(A) the name, form of business organization, address, and principal place of business;

(B) the principal business activity, including a statement whether each user is an eligible entity under §5 of the Act;

(C) the percentage or portion of use delegated to each user of the facility;

(D) a description of any agreement of commitment by each user to use the facility; and

(E) in place of subparagraphs (A)-(D) of this paragraph, a statement that the facility will be open for use to the general public, if appropriate.

(5) Other operators. If any person other than the primary user will lease, manage, operate, or otherwise obtain any form of control of the facility, the following items, provided by the primary user:

(A) all information required in paragraph (1) of this section, as to any such person; and

(B) copies or detailed descriptions of any lease, management, or operation agreement or such other agreement allowing control of the facility by any such person.

§25.77. Loan Guarantor. The application must contain the following information and documents concerning the loan guarantor, if any:

(1) Description of loan guarantor. As to each loan guarantor, the same information required of the user in §25.76(1)(A)-(H) of this chapter (relating to Users of the Facility).

(2) Description of loan guarantee agreement. A copy or detailed description of the agreement guaranteeing the user payments to the corporation under the lease, sale, or loan agreement.

(3) Proposed opinion of loan guarantor counsel. A proposed opinion of counsel for each loan guarantor, in substantially the form to be delivered at closing, as to the following:

(A) the creation and existence of the loan guarantor;

(B) the authority, actions, and other proceedings of the loan guarantor in connection with the project and the bonds; and

(C) the fact that the instrument of guarantee constitutes a legally binding obligation of the loan guarantor.

§25.78. Bond Guarantor. The application must contain the following information and documents concerning the bond guarantor, if any:

(1) Description of bond guarantor. Evidence, acceptable to the board, of the bond guarantor's financial ability and experience to act as bond guarantor.

(2) Description of guarantee agreement. A copy or detailed description of the agreement guaranteeing or insuring the payment of principal and interest to the bondholders.

(3) Proposed opinion of bond guarantor counsel. A proposed opinion of counsel for each bond guarantor, in substantially the form to be delivered at closing,

as to the following:

(A) the creation and existence of the bond guarantor;

(B) the authority for the actions and other proceedings of the bond guarantor in connection with the facility and the bonds; and

(C) the fact that the instrument of guarantee constitutes a legally binding obligation of the bond guarantor.

§25.79. The Bonds. The application must contain the following information and documents concerning the bonds:

(1) Description of the bonds.

(A) the amount of bonds and proposed date of issuance;

(B) a proposed debt service schedule for the bonds and the net effective interest rate for the bonds as defined by Texas Civil Statutes, Article 717k-2, §1(d), as amended;

(C) the rating of the bonds, if any, and a statement whether any application for such rating has been made; and

(D) the security for the bonds.

(2) Proposed opinion of bond counsel. A proposed opinion of bond counsel, in substantially the form to be delivered at closing, to the effect that the bonds have been duly issued and delivered by the corporation in compliance with the Act.

(3) Proposed investment letters. Proposed investment letters from the original purchasers of the bonds, or the purchasers of the bonds from the underwriter, in the form to be delivered at closing, and required only if the letter regarding the marketability of bonds as described in paragraph (4) of this section is not provided; the proposed investment letters must state in substance that said purchaser:

(A) is a financial institution such as a bank or insurance company, engaged in the business of investing in securities like the bonds;

(B) has been furnished with all necessary information that it desires in order to enable it to make an informed decision concerning investment in the bonds; and

(C) intends to purchase the bonds for its own account, subject to certain rights to sell, pledge, transfer, convey, hypothecate, mortgage, or dispose of such bonds at some future date.

(4) Proposed letter regarding marketability of bonds. A proposed letter from the underwriter, and/or a letter from the placement agency or financial advisor, that the bonds are marketable. Delivery of a proposed investment letter in compliance with paragraph (3) of this section will constitute compliance with this requirement.

(5) Independent analysis. If, first, the application does not have an investment letter satisfying the requirements of paragraph (3) or (4) of this section, and, second, neither the primary user nor any loan guarantor has a current rating on any of its outstanding securities from Moody's Investors Service, Inc., of Ba or higher or from Standard & Poor's Corporation of BB or higher, and, third, the bonds sought to be issued have not received a rating from either Moody's Investment Service, Inc., or Standard & Poor's Corporation of at least Baa or BBB,

respectively, then the application must contain a report of an independent financial analyst or other consultant, approved by the board, analyzing the other information contained in the application, which report may, at the request of the board, also contain a feasibility analysis of the facility. The user shall bear the cost of preparing such report, but it may be reimbursed from the proceeds of the bonds.

(6) Closing date. The proposed time, date, and location for the closing of the transaction and delivery of the bonds.

§25.80. Proposed Agreements. The application must contain the following information and documents concerning proposed agreements:

(1) a proposed counterpart agreement between the primary user, and loan guarantor, if any, and the corporation to which the primary user, and loan guarantor, if any, agrees:

(A) to pay all project costs which are not or cannot be paid or reimbursed from the proceeds of the bonds; and

(B) at all times, to indemnify and hold harmless the corporation, the board, and the department against all losses, costs, damages, expenses, and liabilities of whatsoever nature, including, but not limited to, attorneys' fees, litigation and court costs, amounts paid in settlement, and amounts paid to discharge judgments, directly or indirectly resulting from, arising out of, or related to the issuance, offering, sale, delivery, or payment of the bonds, and interest thereon, or the design, construction, installation, operation, use, occupancy, maintenance, or ownership of the project;

(2) copies of the proposed leases, sales or loan agreements, instruments of guarantee, if any, and all other agreements between or among the participants relating to the use of the facility or to the bonds; and

(3) provision in such agreements for each of the following:

(A) written notification of the board by the trustee, paying agent, registrar, depository, or lender as appropriate, in the event of a default in the timely payment of monies due in payment of the bonds or interest coupons or upon notification of the trustees by the Internal Revenue Service that the interest is, or may be, subject to federal income taxation;

(B) that no additional or refunding bonds will be issued or delivered without prior board approval; and

(C) that, by virtue of the project being financed under the Act, the user has not and will not maintain that it is entitled to an exemption for Texas sales or use taxes or personal property acquired in connection with the facility except as otherwise allowed by state law.

§25.81. Additional Information. The board may require additional information or documentation for conditional or final approval, or otherwise. The applicant shall bear the costs thereof.

§25.82. Proposed Conditional Approval Letter. Each application must have attached a proposed conditional approval letter which the applicant desires the board to issue.

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 October 11, 1983.

TRD-838110 Jim Hightower
Commissioner
Texas Department of
Agriculture

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For further information, please call (512) 475-6346.

Subchapter E. Facility Bonds: Conditional Approval of Application

4 TAC §25.101, §25.102

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

§25.101. Findings Required. The board shall grant conditional approval of an application if, after notice and hearing, the board finds that:

(1) the applicant is an eligible entity under §5 of the Act;

(2) the proposed facility is proper under §3(9) of the Act;

(3) the agricultural products involved in the operation of the proposed facility are within the definition of §3(2) of the Act;

(4) the operation of the proposed facility will constitute a proper agricultural enterprise under §3(1) of the Act;

(5) the primary user has no present intention of disposing of, abandoning, or transferring control of the proposed facility;

(6) the primary user has no present intention of directing the proposed facility to a use other than the purposes represented to the board and the corporation involved;

(7) there is a need for financing the proposed facility under the Act;

(8) the proposed facility will further the ability of agricultural producers of this state to become involved in processing, packaging, or marketing of agricultural products; and

(9) the potential favorable impact outweighs the potential adverse impact of the proposed facility on agricultural markets in this state.

§25.102. Conditions for Final Approval. In the conditional approval letter, the board shall state all necessary items, including the items required under Subchapter F of this chapter (relating to Facility Bonds: Final Approval of Application), which the applicant must supply or perform as the board deems necessary and appropriate, in order to receive final approval.

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

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Commissioner
Texas Department of Agriculture

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Subchapter F. Facility Bonds: Final Approval of Application

4 TAC §25.111

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

§25.111. Required Documents. Upon request of the applicant and within 30 days of issuing conditional approval, the board shall issue final approval of the application, provided that the applicant has delivered to the board such opinions, evidence, certificates, instruments, or other documents as the board may require as a condition of its final approval. Such documents must be part of the final transcript of proceedings, and must include the following:

- (1) Affidavit of user. An affidavit executed by an officer of the primary user stating that:
 - (A) as of the closing date there has been no material adverse change in the affairs of the primary user from that described in the application or otherwise disclosed to and approved by the board; and
 - (B) the instruments executed and delivered by the respective parties are substantially in the same form contained in the applications or otherwise approved by the board.
- (2) Certificate of guarantor. A certificate signed by an officer of each guarantor stating that as of the closing date there has been no material adverse change in the affairs of the guarantor from that described by the application or otherwise disclosed to, and approved in writing by, the board.
- (3) Opinions of counsel. Executed opinions of counsel, in substantially the same form previously approved by the board in §25.74(3), §25.76(3), §25.77(3), and §25.78(3) of this chapter (relating to The Corporation, Users of the Facility, Loan Guarantor, and Bond Guarantor, respectively).
- (4) Investment letter. As appropriate, executed investment letters from the original purchasers of the bonds, or the purchasers of the bonds from the underwriter, in substantially the same form previously approved by the board in accordance with §25.79(3) of this chapter, or if appropriate, §25.79(4) or §25.79(5) of this chapter (relating to The Bonds).

(5) Other agreements. Executed copies of all agreements in substantially the same form as originally submitted in the application in compliance with §25.80 of this chapter (relating to Proposed Agreements), or otherwise approved by the board.

(6) Proposed final order. A proposed final approval order which the applicant desires the board to enter.

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

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Commissioner
Texas Department of Agriculture

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Subchapter G. Loans to Lending Institutions Program Bonds: Contents of Application

4 TAC §§25.131-25.141

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

§25.131. Applicability. In order to qualify for board approval of bonds issued under a Loans to Lending Institutions Program, each application must contain all information and documentation required under this subchapter, as applicable.

§25.132. General Information. The application must contain the following general information:

- (1) a brief description of the proposed facilities to be financed, or the types of agricultural enterprises to be benefited by the proceeds from the bonds, or both;
- (2) the total lendable proceeds from the proposed bonds, the schedule of use of bond proceeds, and the proposed uses of other proceeds; and
- (3) a description of the favorable and adverse impact the loan program is expected to have on all relevant agricultural producers and agricultural markets. The description must have as an attachment comments, evidence, and testimony received by the applicant favoring or opposing the proposed loan program, or a summary of such comments, evidence, and testimony.

§25.133. Participants. The application must list the name, mailing address, and telephone number for each of the following persons involved in the proposed bond sale:

- (1) the corporation, the corporation's representative, and the corporation's counsel;
- (2) the participating lenders, the participating lenders' representative, and the participating lenders' counsel;

(3) the original purchaser of the bonds, the purchaser's representative, and the purchaser's counsel;

(4) the bond guarantor, the guarantor's representative, the guarantor's counsel, and the guarantor's accounting firm;

(5) the financial advisor or placement agent, the advisor's or agent's representative, and the advisor's or agent's counsel;

(6) the underwriter, the underwriter's representative, and the underwriter's counsel;

(7) the trustee or depository, the trustee's or depository's representative, and the trustee's or depository's counsel;

(8) the paying agent, the agent's representative, and the agent's counsel;

(9) the registrar, the registrar's representative, and the registrar's counsel; and

(10) the bond counsel.

§25.134. Survey of Need.

(a) A survey or other statistical evaluation, acceptable to the board, of the need for making money available for Loans to Lending Institutions Program under the Act must be conducted in the county served by the corporation.

(b) The results of the survey of need must demonstrate the need for a Loans to Lending Institutions Program and contain such further data necessary for the corporation to approve the program and to make the findings required under §25.135(2) of this chapter (relating to The Corporation).

(c) A description or a copy of survey of need must be attached to the application.

§25.135. The Corporation. The application must contain the following information and documents concerning the corporation:

(1) Description of corporation:

(A) the name, street address, and mailing address of the corporation, and date of its incorporation;

(B) a list of all counties served by the corporation; and

(C) the name, street address, and mailing address of each of the directors.

(2) Resolution of corporation. A certified copy of the resolution of the board of directors of the corporation approving the Loans to Lending Institutions Program, containing the following:

(A) appropriate findings that the Loans to Lending Institutions Program is proper under the Act and that it is necessary or convenient for agricultural enterprise in this state; these findings may be based upon reasonable reliance on representations of the participants and must include:

(i) a description of the structure of the Loans to Lending Institutions Program and a finding that it is proper under the Act;

(ii) a description of the method of financing the Loans to Lending Institutions Program;

(iii) a finding that there is a need in the counties served by the corporation for a Loans to Lending Institutions Program under the Act;

(iv) a finding that the Loans to Lending Institutions Program will further the ability of agricultural

producers of this state to become involved in processing, packaging, or marketing of agricultural products;

(v) a description of the favorable and adverse impact the Loans to Lending Institutions Program will have on agricultural producers and agricultural markets in this state; and

(vi) any other information and data deemed necessary by the corporation to demonstrate the need for the proposed Loans to Lending Institutions Program;

(B) the terms and conditions which have been applied or which will be applied, and the method for application, to ensure compliance of the Loans to Lending Institutions Program with the Act; the compliance provisions must include:

(i) standards ensuring that borrowers from participating lenders are proper under §3(9) of the Act;

(ii) standards ensuring that the agricultural products in the operation of a financial facility are within the definition of §3(2) of the Act;

(iii) standards to ensure that the operation of financed facilities will constitute proper agricultural enterprises under §3(1) of the Act;

(iv) standards to ensure that borrowers are eligible for program financing under §5 of the Act;

(v) standards to ensure that substantially all of the net proceeds of the Loans to Lending Institutions Program will be used for loans for agricultural enterprises under the Act;

(vi) standards for allocating the funds available for lending under the Loans to Lending Institutions Programs, in the event borrowers apply for loans in an aggregate amount in excess of funds available; and

(vii) any other standards and conditions the corporation deems necessary to ensure compliance with the purposes of the Act; and

(C) at the corporation's discretion, any other covenants, conditions, and provisions allowed by the Act.

(3) Proposed opinion of corporation counsel. A proposed opinion of counsel for the corporation, in substantially the form to be delivered at closing, as to the following:

(A) the validity of the incorporation and existence of the corporation; and

(B) the legal authority for the actions and other proceedings of the corporation in connection with the proposed Loans to Lending Institutions Program and the bonds to be issued in connection with the program.

(4) Transcript of corporate proceedings. At the discretion of the corporation, a transcript of proceedings before the corporation regarding the application and a request by the corporation that the application be approved by the board.

§25.136. Costs. The application must contain a description of the following items of the Loans to Lending Institutions Program and a statement of the actual cost or, if unavailable, the estimated cost of each of the following:

(1) expenses incurred in connection with the issuance, approval, qualification, and sale of bonds;

(2) the guarantee or insurance of the bonds by the bond guarantor;

(3) printing, engraving, and reproduction services;

- (4) fees of a trustee, registrar, or paying agent;
- (5) fees or other charges of the participating lenders;
- (6) all charges for administering the Loans to Lending Institutions Program;
- (7) any initial bond fund and interest reserve fund;
- (8) any other reserve or contingency fund; and
- (9) all other fees and expenses connected with the issuance of the bonds that the corporation determines are necessary to effectuate the purpose of the Act, including sufficient sums to reimburse the corporation for time spent by its agents and employees.

§25.137. Bond Guarantor. The application must contain the following information and documents concerning the bond guarantor:

- (1) Description of bond guarantor. Evidence, acceptable to the board, of the bond guarantor's financial ability and experience to act as bond guarantor.
- (2) Description of guarantee agreement. A copy or detailed description of the agreement guaranteeing or insuring the payment of principal and interest to the bond holders.

(3) Proposed opinion of bond guarantor counsel. A proposed opinion of counsel for each bond guarantor, in substantially the form to be delivered at closing, as to the following:

- (A) the creation and existence of the bond guarantor;
- (B) the authority for the actions and other proceedings of the bond guarantor in connection with the Loans to Lending Institutions Program and the bonds; and
- (C) the fact that the instrument of guarantee constitutes a legally binding obligation of the bond guarantor.

§25.138. The Bonds. The application must contain the following information and documents concerning the bonds:

- (1) Description of the bonds:
 - (A) the amount of bonds and proposed date of issuance;
 - (B) a proposed debt service schedule for the bonds and the net effective interest rate for the bonds as defined by Texas Civil Statutes, Article 717k-2, §1(d), as amended;
 - (C) the rating of the bonds, if any, and a statement whether any application for such rating has been made; and
 - (D) the security for the bonds.
- (2) Proposed opinion of bond counsel. A proposed opinion of bond counsel, in substantially the form to be delivered at closing, to the effect that the bonds have been duly issued and delivered by the corporation in compliance with the Act.

(3) Proposed investment letters. Proposed investment letters from the original purchasers of the bonds, or the purchasers of the bonds from the underwriter, in the form to be delivered at closing, and required only if the letter regarding the marketability of bonds as described in paragraph (4) of this section is not provided;

the proposed investment letter must state in substance that said purchaser:

(A) is a financial institution such as a bank or insurance company, engaged in the business of investing in securities like the bonds;

(B) has been furnished all necessary information that it desires in order to enable it to make an informed decision concerning investment in the bonds; and

(C) intends to purchase the bonds for its own account, subject to certain rights to sell, pledge, transfer, convey, hypothecate, mortgage, or dispose of such bonds at some future date.

(4) Proposed letter regarding marketability of bonds. A proposed letter from the underwriter, and/or a letter from the placement agent or financial advisor, that the bonds are marketable. Delivery of a proposed investment letter in compliance with paragraph (3) of this section will constitute compliance with this requirement.

(5) Independent analysis. If, first, the application does not have an investment letter satisfying the requirements of paragraph (3) or (4) of this section, and, second, neither the primary user nor any guarantor has a current rating on any of its outstanding securities from Moody's Investors Service, Inc., of Ba or higher or from Standard & Poor's Corporation of BB or higher, and, third, the bonds sought to be issued have not received a rating from either Moody's Investors Services, Inc., or Standard & Poor's Corporation of at least Baa or BBB, respectively, then the application must contain a report of an independent financial analyst or other consultant, approved by the board, analyzing the other information contained in the application, which report may, at the request of the board, also contain a feasibility analysis of Loans to Lending Institutions Program; the applicant shall bear the cost of preparing such report, but he may be reimbursed from the proceeds of the bonds.

(6) Closing date. The proposed time, date, and location for the closing of the transaction and delivery of the bonds.

§25.139. Proposed Agreements. The application must contain the following information and documents concerning proposed agreements:

(1) a proposed counterpart agreement, to be executed by each borrower from participating lenders, under which the borrower agrees:

(A) to pay all costs of facilities which are not or cannot be paid or reimbursed from the proceeds of bonds; and

(B) at all times, to indemnify and hold harmless the corporation, the board, and the department against all losses, costs, damages, expenses, and liabilities of whatsoever nature, including, but not limited to, attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments directly or indirectly resulting from, arising out of, or related to the issuance, offering, sale, delivery or payment of the bonds, and interest thereon, or the design, construction, installation, operation, use, occupancy, maintenance, or ownership of the project;

(2) copies of the proposed form of the leases, sales, or loan agreements, instruments of guarantee, if any, and any other agreement to be executed by borrowers from participating lenders under the loans to lending in-

stitutions program; and

(3) provision in such agreements for each of the following:

(A) written notification of the board by the corporation, trustee, paying agent, registrar, or other person as appropriate, in the event of a default in the timely payment of monies due in payment of the bonds or interest coupons, or upon notification of the trustees by the Internal Revenue Service that the interest is, or may be, subject to federal income taxation;

(B) that no additional or refunding bonds will be issued or delivered without prior board approval; and

(C) that, by virtue of financing under the Act, the borrower and all users of a financed facility have not and will not maintain that they are entitled to an exemption for Texas sales or use taxes or personal property acquired in connection with the loan or the facility except as otherwise allowed by state law

§25.140. Additional Information. The board may require any additional information or documentation for conditional or final approval, or otherwise. The applicant shall bear the costs thereof.

§25.141. Proposed Conditional Approval Letter. Each application must have attached a proposed conditional approval letter which the applicant desires the board to issue.

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

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Texas Department of Agriculture

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Subchapter H. Loans to Lending Institutions Program Bonds: Conditional Approval of Application

4 TAC §25.151, §25.152

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

§25.151. Findings Required. The board shall grant conditional approval of an application if, after notice and hearing, the board finds that:

(1) the proposed Loans to Lending Institutions Program complies with all requirements of the Act and these rules;

(2) the proposed Loans to Lending Institutions Program will be administered by the corporation or trustee, or another person acceptable to the board, to en-

sure compliance with the Act and these rules by the participating lenders and the borrowers;

(3) there is a need for financing the proposed program under the Act;

(4) the proposed program will further the ability of agricultural producers of this state to become involved in processing, packaging or marketing of agricultural products; and

(5) the potential favorable impact outweighs the potential adverse impact of the proposed facility on agricultural producers and agricultural markets in this state.

§25.152. Conditions for Final Approval. In the conditional approval letter, the board shall state all necessary items, including the items required under Subchapter I of this chapter (relating to Loans to Lending Institutions Program Bonds: Final Approval of Application), which the applicant must supply or perform as the board deems necessary and appropriate, in order to receive final approval.

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

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Subchapter I. Loans to Lending Institutions Program Bonds: Final Approval of Application

4 TAC §25.161

This new rule is adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

§25.161. Required Documents. Upon request of the applicant and within 30 days of issuing conditional approval, the board shall issue final approval of the application, provided that the applicant has delivered to the board such opinions, evidence, certificates, instruments, or other documents as the board may require as a condition of its final approval. Such documents must be part of the final transcript of proceedings, and must include the following:

(1) Certificate of user. A certificate executed by the president and secretary of the corporation stating that:

(A) as of the closing date there has been no material change in the Loans to Lending Institutions Program from that described in the application or otherwise disclosed to and approved by the board; and

(B) the instruments executed and delivered by the respective parties are substantially in the same form

contained in the application or otherwise approved by the board.

(2) Certificate of guarantor. A certificate signed by an officer of each guarantor stating that as of the closing date there has been no material adverse change in the affairs of the guarantor from that described by the application or otherwise disclosed to, and approved in writing by, the board.

(3) Opinions of counsel. Executed opinions of counsel, in substantially the same form previously approved by the board in accordance with §25.135(4), §25.137(3), and §25.138(2) of this chapter (relating to The Corporation, Bond Guarantor, and The Bonds, respectively).

(4) Investment letter. As appropriate, executed investment letters from the original purchasers of the bonds, or the purchasers of the bonds from the underwriter, in substantially the same form previously approved by the board in accordance with §25.138(3) of this chapter, or if appropriate, §25.138(4) or §25.138(5) of this chapter (relating to The Bonds).

(5) Other agreements. Executed copies of all agreements in substantially the same form as originally submitted in the application in compliance with §25.139 of this chapter (relating to Proposed Agreements), or otherwise approved by the board.

(6) Proposal final order. A proposed final approval order which the applicant desires the board to enter.

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

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TRD-838115 Jim Hightower
Commissioner
Texas Department of Agriculture

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Subchapter J. Loans to Lending Institutions Program Bonds: Certification

4 TAC §§25.171-25.173

These new rules are adopted under the Agricultural Development Act, Senate Bill 866, 68th Legislature, 1983, which provides the board with the authority to adopt rules setting forth standards and guidelines for the administration of the Act.

§25.171. Certification by Corporation or Trustee.

(a) Prior to the final approval of a loan by a participating lender in a Loans to Lending Institutions Program, the corporation or the trustee shall certify to the board that the loan is proper under the Act, the rules, and the corporation's resolution.

(b) The certification must have as attachments copies of the documents and other information upon which the corporation or trustee relies in making the certification

§25.172. *Disapproval by the Board.* Unless the board or the staff notifies the corporation or the trustee of disapproval within 10 working days after the filing of the certification, the loan by the participating lender will be eligible for disbursement. Any notice of disapproval must contain a statement of the deficiencies in the certificate or supporting information which result in disapproval.

§25.173. *Hearing.* After receipt of notice of disapproval, the corporation or trustee may request a hearing before the board on the disapproval or may correct the deficiencies and resubmit the certification.

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

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Commissioner
Texas Department of Agriculture

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TITLE 7. BANKING AND SECURITIES

Part IV. Texas Savings and Loan Department

Chapter 63. Fees and Charges

7 TAC §63.11

The Texas Savings and Loan Department adopts new §63.11, without changes to the proposed text as published in the August 26, 1983, issue of the *Texas Register* (8 TexReg 3308).

This rule is adopted to enable the department to comply with Senate Bill 149, 68th Legislature, 1983, §6, which requires approval by the savings and loan commissioner of an application for change of control of a savings and loan association.

The rule will assess a \$5,000 fee for every change of control application filed with the commissioner.

No written comments were received regarding adoption of the new rule.

The new rule is adopted pursuant to Texas Civil Statutes, Article 342-114, which provide the Savings and Loan Section of the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of this state, and from time to time, to amend

the same, and under Senate Bill 149, §6(L), which provides that the Savings and Loan Section by rule shall adopt a schedule of fees for the filing of applications and the holding of hearings.

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

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TRD-838118 Russell R. Oliver
 General Counsel
 Texas Savings and Loan
 Department

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Proposal publication date: August 26, 1983
For further information, please call (512) 475-7991.

TITLE 19. EDUCATION
Part II. Texas Education Agency
Chapter 77. Comprehensive
Instruction
Subchapter B. General Education
Program

19 TAC §77.23

The Texas Education Agency adopts new §77.23, without changes to the proposed text published in the July 22, 1983, issue of the *Texas Register* (8 TexReg 2737).

This new rule implements House Bill 2077, 68th Legislature, 1983.

The rule authorizes the commissioner of education to authorize the establishment of one or more pilot projects for year-round school programs. Districts must submit a plan for the project, to be approved by the commissioner, and must submit an evaluation plan covering at least the elements specified in the rule including the effect on attendance of students and teachers; the effect of the calendar and schedule on the program of instruction received by students; the effect on student achievement; the cost of the pilot program compared to the regular program; the attitude of students, teachers, and parents; and the problems and successes encountered in the implementation of the program. No funding for these programs was appropriated by the 68th Legislature.

No comments were received regarding adoption of the new rule.

This new rule is adopted under the authority of the Texas Education Code, §11.203(a), which directs that guidelines for pilot projects for year-round school programs shall be developed by the Central Education

Agency and approved by the State Board of Education.

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

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TRD-838155 Raymon L. Bynum
 Commissioner of Education

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Proposal publication date: July 22, 1983
For further information, please call (512) 475-7077.

Chapter 85. Student Services
Subchapter C. Health Services
Advisory Committee on the
Comprehensive School Health
Program

19 TAC §§85.51-85.54

The Texas Education Agency adopts the repeal of §§85.51-85.54, without changes to the proposal published in the July 22, 1983, issue of the *Texas Register* (8 TexReg 2738).

The rules were originally adopted to create the Advisory Committee on the Comprehensive School Health Program, define its purpose, responsibilities, and membership guidelines.

The committee addressed major concerns of the school health program and provided appropriate advice to the commissioner of education. The committee also provided input on the essential elements for health education for the statewide curriculum study. The advisory committee has accomplished all the objectives for which it was established and has therefore been abolished, and the rules have been repealed.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the authority of the Texas Education Code, §11.25(f), which authorizes the State Board of Education to appoint official commissions composed of citizens of the state to advise the Central Education Agency.

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

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 Commissioner of Education

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**Chapter 93. Instructional
Development**
**Subchapter G. Aerospace-Aviation
Education**

19 TAC §93.121, §93.122

The Texas Education Agency adopts the repeal of §93.121 and §93.122, without changes to the proposal published in the July 22, 1983, issue of the *Texas Register* (8 *TexReg* 2738).

The rules were originally adopted when the Aerospace-Aviation Education Program was established to express the State Board of Education's commitment to the program. The advisory council set up by this rule has accomplished all the objectives for which it was established. The program has now been firmly established and there is no longer a need for a separate subchapter addressing this area. Therefore, the rules have been repealed.

Guidelines for aerospace-aviation education will be included in the rules pertaining to the new curriculum, which are being developed as a result of House Bill 246, 67th Legislature, 1981.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the authority of the Texas Education Code, §11.25(f), which authorizes the State Board of Education to appoint official commissions composed of citizens of the state to advise the Central Education Agency.

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

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Commissioner of Education

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**Chapter 105. Foundation School
Program**
Subchapter E. Salary Schedule

19 TAC §105.92

The Texas Education Agency adopts amendments to §105.92, without changes to the proposed text published in the July 29, 1983, issue of the *Texas Register* (8 *TexReg* 2855).

This rule, concerning the minimum salary schedule, was amended as a result of passage of House Bill 2160, by the 68th Legislature, 1983. The bill moved superintendents of small school districts (under 400

average daily attendance (ADA)) from pay grade 14 to pay grade 15 on the Public Education Compensation Plan.

Under the amended rules, superintendents of small school districts (under 400 ADA) have been placed on pay grade 15. While House Bill 2160 moved all superintendents up to at least pay grade 15, this will not necessarily apply to every school district in the state, since districts with fewer than 12 grades are not required to employ a superintendent as the chief administrative officer.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Education Code, §16.005, which authorizes the State Board of Education to implement and administer the Foundation School Program; and the Texas Education Code, §16.056, as amended by House Bill 2160, 68th Legislature, 1983, which delineates the Texas State Public Education Compensation Plan.

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

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Commissioner of Education

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Subchapter G. Transportation

19 TAC §105.136

The Texas Education Agency adopts the repeal of §105.136, without changes to the proposal published in the July 22, 1983, issue of the *Texas Register* (8 *TexReg* 2739).

This section, which concerned the allocation of funds for contracting with public transportation companies, has been repealed pursuant to Senate Bill 763, 68th Legislature, 1983, which amended the Texas Education Code to allow school districts to contract with commercial as well as public transportation companies or systems. Provisions concerning both kinds of contracts have been consolidated into one rule.

Provisions concerning such funding allocations have been included in amendments to 19 TAC §85.184.

No comments were received regarding adoption of the repeal.

This repeal is adopted under the authority of the Texas Education Code, §16.212, as amended by Senate Bill 763, 68th Legislature, 1983, which allows public school districts to contract with public or commercial transportation systems, and gives the State Board of

Education the authority to develop and implement rules governing such transportation contracts.

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 October 12, 1983.

TRD-838159 Raymon L. Bynum
 Commissioner of Education

Effective date: November 2, 1983
Proposal publication date July 22, 1983
For further information, please call (512) 475-7077.

Chapter 129. Student Attendance

Subchapter A. Student Attendance Allowed

19 TAC §129.1

The Texas Education Agency adopts amendments to §129.1, without changes to the proposed text published in the July 29, 1983, issue of the *Texas Register* (8 TexReg 2856).

This section concerns free attendance in general and has been amended to reflect provisions of House Bill 1689, 68th Legislature, 1983, relating to student eligibility for enrollment.

A child may be enrolled in the first grade if he is at least six years of age at the beginning of the scholastic year or has been enrolled in the first grade or has completed kindergarten in the public schools in another state prior to transferring to a Texas public school.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the authority of the Texas Education Code, §21.031, which specifies requirements concerning admission to Texas public schools; Texas Civil Statutes, Article 6252-13a, §3(7), which defines "rule", in part, as any agency statement which implements or interprets law or policy; and the Texas Education Code, §11.24, which gives the State Board of Education the authority to make rules for carrying out the duties placed on it or on the Central Education Agency by the legislature.

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 October 12, 1983.

TRD-838160 Raymon L. Bynum
 Commissioner of Education

Effective date: November 2, 1983
Proposal publication date: July 29, 1983
For further information, please call (512) 475-7077.

Subchapter B. Compulsory Student Attendance

19 TAC §129.21

The Texas Education Agency adopts an amendment to §129.21, without changes to the proposed text published in the July 22, 1983, issue of the *Texas Register* (8 TexReg 2742).

This section concerns the general provisions of compulsory student attendance. It has been amended to implement House Bill 1336, 68th Legislature, 1983.

In accordance with the Texas Education Code, §21.032, *et seq.*, students enrolled in kindergarten are required to attend school for at least 82 days during each semester for which the child is enrolled.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the authority of the Texas Education Code, §21.032, which specifies compulsory attendance requirements; Texas Civil Statutes, Article 6252-13a, §3(7), which defines "rule", in part, as any agency statement which implements or interprets law or policy; and the Texas Education Code, §11.24, which gives the State Board of Education the authority to make rules for carrying out the duties placed on it or on the Central Education Agency by the legislature.

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 October 12, 1983.

TRD-838161 Raymon L. Bynum
 Commissioner of Education

Effective date November 2, 1983
Proposal publication date: July 22, 1983
For further information, please call (512) 475-7077.



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

25 TAC §289.1

The Texas Department of Health adopts amendments to §289.1, without changes to the proposed text published in the July 22, 1983, issue of the *Texas Register* (8 TexReg 2750). Changes have been made, however, to the content of the material adopted by reference as stated in the following paragraphs

The amendments are the addition to the *Texas Regulations for Control of Radiation*, Part 45, titled "Licensing Requirements for Near-Surface Land Disposal of Radioactive Waste," and amendments to existing Parts 11 and 21 of the rules. These parts are adopted by reference in subsections (a)(15), (a)(1), and (a)(3) of §289.1

The new Part 45 rules will provide necessary technical standards, criteria, and procedures to ensure the public health and safety and long term environmental protection in the licensing of a near-surface radioactive waste disposal site in Texas. The amendments to the rules will bring Texas rules into compatibility with the Nuclear Regulatory Commission's new rules in 10 Code of Federal Regulations Parts 20 and 61.

Part 45 establishes, for near surface land disposal of low-level radioactive waste, the procedures, criteria, and terms and conditions upon which the agency issues licenses for the disposal of radioactive wastes received from other persons. By law, the agency can issue such a license only to the Texas Low-Level Radioactive Waste Disposal Authority.

Specifically, the rules establish performance objectives for land disposal of low-level radioactive waste, technical requirements for the siting, design, operation, and closure activities for a near-surface disposal facility; institutional requirements; and administrative and procedural requirements for licensing a disposal facility.

Adopted changes to Part 11 of the rules redefine several terms to be consistent with the Radiation Control Act and establish rules for communication with the agency and interpretation of rules.

Adopted amendments to Part 21 of the rules establish technical requirements concerning the waste form that waste generators must meet for the land disposal of waste; classification of waste; and shipping manifests to track waste shipments. The adopted amendments to Part 21 will not go into effect until December 27, 1983, at which time the U.S. Nuclear Regulatory Commission (NRC) will put the same rules into effect nationwide.

A public hearing on the proposed rules was held on August 12, 1983, at which time the U.S. Nuclear Regulatory Commission presented oral comments sup-

porting the proposed rules. In addition, the agency received written comments supporting the rules as proposed; there were no comments against the rules. Clarification changes have been made to the proposed rules as a result of comments received, however, none of the changes resulting from comments included major or substantive changes. The following is a summary of other comments received and the resulting agency responses.

The site-specific environmental information required in a disposal site license application has been expanded to include climatology and geochemistry characteristics. This will broaden disposal site baseline information. See §45.13(c).

Geochemical data has been added to the information that must be submitted in a disposal site closure application. This will allow the licensee to demonstrate a tight system in which no significant change in the geochemistry has occurred. See §45.28(a)(1).

The rules now specifically state that "only wastes containing or contaminated with radioactive materials shall be disposed of at the disposal site." See §45.52(j). This is compatible with Nuclear Regulatory Commission rules in 10 Code of Federal Regulations Part 61.

The words "and container" have been deleted for purposes of determining concentration of waste in §21.308(g). Permitting concentration to be determined for burial purposes by averaging the radioactivity, without limitation, over the waste and the container could result in situations in which a significant difference between the weight of the waste and weight of the container might occur. This difference could have affected the disposal site's ability to meet performance objectives. This change brings the proposed rules into compatibility with Nuclear Regulatory Commission rules in 10 Code of Federal Regulations Part 20.

Modifications and additions to definitions were proposed in the comments. However, those terms suggested for addition are already in Part 11 of the rules and do not need to be redefined for Part 45. Definitions used in the proposed rules are either from the Radiation Control Act, Texas Civil Statutes, Article 4590f, or are compatible with the Nuclear Regulatory Commission's rules in 10 Code of Federal Regulations Part 61.

The agency disagreed with other suggested modifications in wording of the proposed rules because the rules are written to specifically comply with the requirements in the Radiation Control Act, Texas Civil Statutes, Article 4590f.

Those commenting for the rule were the U.S. Nuclear Regulatory Commission, Bureau of Economic Geology, University of Texas at Austin, Texas State Soil and Water Conservation Board, and the Lone Star Chapter of the Sierra Club. There were no commentators against the rule.

The amendments are adopted under Texas Civil Statutes, Article 4590f, § 4(d)(3), 9(C), and 9(E), which provide the Texas Department of Health with the authority to formulate, adopt, and promulgate rules which provide for licensing and registration relating to control, transport, and routing of radioactive material within the State of Texas with due regard for compatibility with the regulatory programs of the federal government; and to establish a classification system for radioactive waste based on radiological, chemical, and biological characteristics and on physical state so that radioactive wastes can be managed safely and compatibly.

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 October 7, 1983

TRD-838089 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date, October 28, 1983
Proposal publication date July 22, 1983
For further information, please call (512) 835-7000.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

Chapter 3. AFDC

The Texas Department of Human Resources adopts the repeal of § 3.2301-3.2306 and new § 3.2301, without changes to the proposed text published in the July 15, 1983, issue of the *Texas Register* (8 TexReg 2633). The department is deleting internal procedures from the citizenship rules and making clarification changes to the new rule.

No comments were received regarding adoption of the repeal and new rule.

Citizenship

40 TAC § 3.2301-3.2306

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorize the department to administer public assistance programs

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

Issued in Austin, Texas, on October 11, 1983

TRD 838140 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date, November 1, 1983
Proposal publication date, July 15, 1983
For further information, please call (512) 441-3355, ext 2037

Citizenship and Alien Status

40 TAC § 3.2301

The new rule is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which authorize the department to administer public assistance programs

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

Issued in Austin, Texas, on October 11, 1983

TRD 838139 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Effective date, November 18, 1983
Proposal publication date, July 15, 1983
For further information, please call (512) 441-3355, ext 2037

Chapter 29. Purchased Health Services

The Texas Department of Human Resources adopts amendments to § 29 604 and § 29 1112, with changes to the proposed text published in the June 24, 1983, issue of the *Texas Register* (8 TexReg 2213). Section 29 604 contained a typographical error in the proposed text. § 29 112 is adopted with an editorial change for consistency.

The rules are amended to ensure that hospital providers obtain prior authorization from the department's health insuring agent to receive reimbursement for parenteral hyperalimentation on an outpatient basis. Outpatient parenteral hyperalimentation administered as a nutritional supplement is excluded from reimbursement.

The Medicaid Program provides coverage of parenteral hyperalimentation necessary to sustain life when administered in an inpatient or outpatient setting.

The following is a list of comments received on the proposal and the department's response to each.

Concerning §29.604, the City of Austin, Department of Law, suggested that coverage for parenteral hyperalimentation be provided for, as opposed to administered, in an outpatient hospital setting regardless of whether or not it is to be self-administered. The commenter also suggested that paragraph (1), which excludes coverage of drugs and biologicals that are self-administered, be amended to contain an exception for parenteral hyperalimentation.

The availability or the administration of parenteral hyperalimentation was not discussed in either of the rules as they were proposed.

The intent of the amendments is to establish the requirement that hospital providers obtain prior authorization from the department's health insuring agent to receive reimbursement of parenteral hyperalimentation on an outpatient basis. At this time, the Medicaid Program does not allow for any take-home items or self-administered drugs, except those provided for under the Vendor Drug Program. Therefore, the wording has not been changed.

Subchapter G. Hospital Services

40 TAC §29.604

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorize the department to administer public and medical assistance programs.

§29.604. Authorized Outpatient Hospital Services. Outpatient hospital services include diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician, except that no payment is made for:

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

(4) Parenteral hyperalimentation therapy unless prior authorization is received from the department's health insuring agent. These services must be considered medically necessary in order to sustain life. Coverage does not extend to hyperalimentation administered as a nutritional supplement.

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 October 11, 1983.

TRD-838147 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: November 1, 1983
Proposal publication date: June 24, 1983
For further information, please call (512) 441-3355,
ext. 2037.

Subchapter L. General Administration

40 TAC §29.1112

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorize the department to administer public and medical assistance programs.

§29.1112. Exclusions and Limitations.

(a) Benefits do not extend to:

(1)-(18) (No change.)

(19) Any parenteral hyperalimentation provided on an outpatient hospital basis without prior authorization from the department's health insuring agent, nor to any outpatient hyperalimentation administered as a nutritional supplement.

(b)-(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 October 11, 1983.

TRD-838148 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: November 1, 1983
Proposal publication date: June 24, 1983
For further information, please call (512) 441-3355,
ext. 2037.

Chapter 50. Day Activity and Health Services

The Texas Department of Human Resources adopts a new rule and amendments concerning recipient eligibility, provider eligibility, and standards of operation in the Day Activity and Health Services (DAHS) Program. The proposals were published in the July 5, 1983, issue of the *Texas Register* (8 TexReg 2470). Sections 50.1902, 50.2902, and 50.3901 are adopted with changes to the proposed text. Sections 50.1901, 50.2901, 50.2903, 50.2904, and 50.3901 are adopted without changes to the proposed text and will not be republished.

The department adopts the "grandfathering" rule to ensure that services continue to be available to clients determined eligible under the two former programs.

The department adopts amendments to the provider eligibility rules to include the new rate of reimbursement to provider agencies.

The department adopts the amendments to the standards of operation requiring an additional nurse to ensure adequate nursing care and supervision for DAHS recipients.

Section 50.1904 requires former day activity and day health recipients to score at least 25 points on the client needs assessment questionnaire and meet in-

come and resource limits. The department does not require recipients to have physician's orders or meet the DAHS medical criteria.

The provider eligibility rules include the new DAHS rate of \$8.61 per half-day unit, approved by Texas Board of Human Resources at the August 11 board meeting. Other amendments are adopted to ensure that the DAHS rules and program handbook are consistent.

Under §50.3901, DAHS facilities are required to have one additional nurse at the facility when 60 or more participants are present. The department requires one of the two nurses to be a registered nurse.

Comments on the proposal were received from the Beaumont Association for Senior Citizens, Lutheran Social Services of Texas, and St. Benedict's Adult Rehabilitative Day Care Center, San Antonio. No groups or associations commented clearly in favor of or against the proposal. The associations' comments consisted primarily of concerns and recommendations about specific portions of the rules. The following is a list of comments received on the proposal and the department's responses to each.

Concerning §50.1901, the Beaumont Association for Senior Citizens expressed concern that the eligibility criteria for DAHS were not appropriate for DAHS recipients

The department disagrees with this comment. The eligibility criteria for DAHS are less stringent than for the most widely used community care services. The criteria are based on the necessity to provide community care services to individuals who may otherwise be institutionalized. The "grandfathering" policies in §50.1904 are intended to minimize the displacement of former day activity or day health recipients while ensuring the availability of DAHS to new recipients who meet all eligibility criteria

Concerning §50.3901, the Lutheran Social Services of Texas commented in favor of the requirement for an additional nurse in facilities serving 60 or more. St. Benedict's of San Antonio opposed this rule change. St. Benedict's contended that the requirement would cause them financial hardship. They also stated that the nurse does not provide enough direct services to justify a second nurse when 60 or more are present.

Funding for the additional nurse and the required staffing ratio is included in the DAHS unit rate. Most DAHS facility nurses have responsibilities other than direct nursing care. The DAHS handbook lists four other major areas of responsibility for the DAHS nurse, including health education, restorative nursing, assistance with personal care tasks, and health assessment and evaluation. In addition to these responsibilities, some facility nurses also function as the DAHS director.

Since nursing assessment, supervision, and monitoring are considered to be of primary importance, and the unit rate is adequate to cover the cost of the additional nurse, the rule amendment is adopted without change.

Concerning §50.3901(d)(1), the Lutheran Social Services of Texas and the Beaumont Association for Senior Citizens commented that they should not be required to have attendants in the facility for a full 10-hour day.

The department disagrees with these comments. Facilities are open 10 hours a day as a support service to families who must work. Some direct delivery staff must be present to supervise recipients who arrive early and/or leave late because they are transported by families or they cannot leave the facility until family members are at home to supervise them. To clarify the intent of this rule, §50.3901(d)(1) has been changed to read "at least one attendant or other direct delivery staff."

Concerning §50.3901(d)(2), the Lutheran Social Services of Texas commented that attendants who serve as drivers should be required to have a current chauffeur's license and added that use of attendants as drivers affected the staff-client ratio.

The department agrees that the drivers should have an appropriate license issued by the DPS. The rule has been changed to read "chauffeur's license" in both subsections (d) and (e). The department is aware that use of attendants as drivers may temporarily jeopardize compliance with the staff-client ratio. Section 50.3901(d)(1), however, states that the staff-client ratio is not required to be maintained while recipients are being transported.

Concerning §50.3902(g), the Lutheran Social Services of Texas commented that a specific number of hours of consultation by a dietician/nutritionist should not be required, as long as appropriate consultation and training are provided.

The department agrees that the number of hours of consultation necessary to ensure that dietary requirements are met may vary. It is necessary, however, to state a minimum requirement to ensure that all diets served by the facility are routinely reviewed by a qualified dietician/nutritionist. No change was made to this rule.

Eligibility Requirements

40 TAC §50.1901, §50.1902

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

§50.1902. Enrollment.

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

(e) Termination of service

(1) Services must be terminated if the recipient:

(A) dies;

(B) moves out of facility's geographic service boundaries;

(C) is admitted to a nursing home, state hospital, or state school;

- (D) requests that service be terminated;
- (E) becomes ineligible.

(2) The DAHS facility must notify the DHR caseworker within five workdays of any situation described in paragraph (1) of subsection (e). The official notification of the termination to the recipient is a community care notification letter.

(f) Recipient appeals. The recipient is entitled to appeal adverse decisions made by the DHR or the DHR's agents to the DHR regional appeals officer.

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 October 11, 1983.

TRD-838144 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: November 1, 1983
Proposal publication date: July 5, 1983
For further information, please call (512) 441-3355,
ext. 2037.

40 TAC §50.1904

The new rule is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

§50.1904. Former Day Activity or Day Health Recipients.

(a) A recipient of day activity or day health services on October 1, 1981, is eligible for DAHS funded through the social services block grant if his:

- (1) score on the client needs assessment questionnaire at reassessment is at least 25 points,
- (2) income is equal to or less than the CCAD income eligibility limit, and
- (3) resources do not exceed the CCAD resource limit.

(b) The department does not require recipients in this category to have physician's orders or meet current medical criteria.

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 October 11, 1983.

TRD-838143 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: November 1, 1983
Proposal publication date: July 5, 1983
For further information, please call (512) 441-3355,
ext. 2037.

Provider Eligibility

40 TAC §§50.2901-50.2904

The amendments are adopted under the authority of the Human Resources Code, Title 2, Chapter 22,

which authorizes the department to administer public assistance programs.

§50.2901. Provider Enrollment.

- (a) (No change.)
- (b) Provider agencies must meet all requirements of Title VI of the Civil Rights Act, §504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

§50.2902. Rates. Provider agencies receive reimbursement monthly. The rate of reimbursement is determined by the Texas Board of Human Resources and is \$8.61 per half-day unit of service. The provider agency may claim reimbursement for one unit of service if three or more hours of service are provided. The provider agency must agree to accept the fee as full payment for units of service it provides.

§50.2903. Claims Processing.

(a) Billing. The provider agency must file claims for services using the community care purchased services delivery report. The provider agency must submit a purchase voucher with each claim. The normal sequence of events for a DAHS claim is as follows:

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

§50.2904. Provider Requirements.

- (a) Notification.
 - (1) Provider agencies must notify DHR about occurrences pertinent to operations, including:
 - (A)-(F) (No change.)
 - (2) Provider agencies must notify DHR in writing within 30 days of these occurrences unless otherwise stated in these rules.
- (b) Facility requirements. The provider agency must ensure that the following requirements are met by the DAHS facility:
 - (1) An area for rest must be provided with a sufficient number of reclining lounge chairs to accommodate the needs of recipients. A room or rooms with beds must be provided for those recipients who prefer privacy. The facility must have sufficient chairs and tables to seat all recipients at one time.
 - (2) The facility must have at least one room available as a treatment/examination room for use by the DAHS nursing staff or the recipient's physician.
 - (3) A written daily activity schedule must be posted at least one week in advance.
 - (4) The facility must make available a brochure or letter which outlines the hours of operation, holidays, and a description of activities offered.
 - (5) Emergency phone numbers must be posted near all phones.
 - (6) The facility must have an outdoor recreation/relaxation area for DAHS recipients.
 - (7) The noon meal may be provided either in a separate dining area for DAHS recipients or in the main dining area of the facility.
 - (8) The facility must have a supply of materials adequate for the participation of all recipients in program activities.
 - (9) The facility must have first aid supplies on the premises.

(10) If the DAHS portion of the building and grounds is used for other purposes when the facility is in operation, written approval must be obtained from the Texas Department of Human Resources (DHR).

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 October 11, 1983.

TRD-838145 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: November 1, 1983
Proposal publication date: July 5, 1983
For further information, please call (512) 441-5355,
ext. 2037.

Standards of Operation

40 TAC §50.3901, §50.3902

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

§50.3901. *Staffing Requirements.*

(a) Nurse. The facility nurse must be a registered nurse (RN) currently licensed by the State Board of Nurse Examiners to practice in Texas or a licensed vocational nurse (LVN). The nurse must be present at the facility at least eight hours a day. If the nurse is an LVN, an RN must be present in the DAHS facility at least two hours each week as a consultant. If there are 60 or more recipients in the facility, two nurses must be present. One of the two nurses must be an RN. The facility nurse may also fulfill the function of facility director if he meets the qualifications for the director. In facilities in which both a director and a nurse are on staff, both must be present at the facility at least eight hours a day. Staff who meet the same qualifications as the nurse and director may be designated to fulfill this requirement.

(b) Director. The director of a DAHS facility must:

(1) have graduated from an accredited four year college or university and have no less than one year of experience in working with people in a human service or medically related program. (One year of experience may be substituted for one year of the required education with a maximum substitution of four years.) At a minimum, the director of a DAHS facility must have a high school diploma from an accredited high school or a GED; or
(2)-(3) (No change.)

(c) Social services and activities coordinator.

(1) The social services and activities coordinator is responsible for planning and scheduling the daily program of activities and social services. He must be present at the facility at least eight hours a day and direct recreational activities. This individual is also responsible for social services including liaison with the family, family and individual counseling, referral to community services, admission, and discharge planning. The social services and activities coordinator may also fulfill the function

of facility director if he meets the qualifications for director.

(2) The social services and activities coordinator must have graduated from an accredited college or university with a background in social work or behavioral sciences. One year of full-time paid experience in direct social work may be substituted for one year of the required college work with a maximum substitution of two years. The social services and activities coordinator must be trained in physical fitness.

(d) Attendant.

(1) At least one attendant or other direct delivery staff must be present at the facility when a recipient is present. If the facility serves private pay individuals, they are included in the recipient population. The provider agency must ensure that the ratio of direct delivery staff to recipients in attendance in the DAHS facility is at least one to eight. This ratio must be maintained during provision of all covered services except facility-provided transportation.

(2) The attendant must be an individual who is free of communicable diseases, is able to perform the duties prescribed, and is 18 years old or older. If an attendant is used as the driver, he must have a current chauffeur's license issued by the Texas Department of Public Safety. If an attendant handles food in the facility, he must meet the requirements described in the rules on food service sanitation of the Texas Department of Health.

(e) Housekeeper/driver (optional). Facilities may employ a part- or full-time housekeeper/driver to discharge these duties. This individual must have a current chauffeur's license issued by the Texas Department of Public Safety.

(f) Food service personnel (optional). If the DAHS facility prepares meals on site, the facility must have sufficient food service personnel to prepare meals and snacks. Food service personnel must meet the requirements described in the rules on food service sanitation of the Texas Department of Health.

§50.3902. *Staff Responsibilities.*

(a) Director. The DAHS facility director is responsible for:

(1) managing the day activities and health services facility.

(2) training and supervising DAHS staff.

(3) (No change.)

(4) maintaining all financial and recipient records.

(5) developing relationships with community groups and agencies for identification and referral of recipients.

(b) Nurse. The DAHS nurse is responsible for:

(1) assessing the initial and continued stay medical needs of recipients.

(2) developing each recipient's plan of care using the appropriate forms; coordinating the plan of care with the social services and activities coordinator.

(3) administering medication.

(4) providing health education.

(5) maintaining medical records.

(6) (No change.)

(7) determining whether self-administered medications have been taken.

(c) Social services and activities coordinator. The social services and activities coordinator is responsible for:

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

(d) Attendant. The attendant is responsible for:

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

(e) Housekeeper/driver. The housekeeper/driver, if one is employed, is responsible for:

(1) operating the facility's vehicles in a safe manner.

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

(f) Food service personnel. Food service personnel, if employed, are responsible for:

(1) preparing meals and snacks.

(2) (No change.)

(g) Dietician/nutritionist consultants. The DAHS facility must receive consultation from a dietician/nutri-

tionist, at least four hours each month, to plan and give signed prior approval for daily snack and luncheon menus. Menus must be reviewed monthly to ensure that substitutions were appropriate.

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 October 11, 1983.

TRD-838146

Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Effective date: November 1, 1983

Proposal publication date: July 5, 1983

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

State Board of Insurance Exempt Filings

State Board of Insurance Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Texas Insurance Code, Articles 5.96 and 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved an extension of the increased limits table factors for providing employee benefit liability insurance. These increased limits factors are intermediate with those previously approved, July 1, 1982.

These additional increased limit factors were proposed by Pennsylvania National Mutual Casualty Insurance Company simultaneously with their program providing employee benefit liability insurance; however, since Travelers Indemnity Company of Hartford, Connecticut, was the lead company (original filing company) their concurrence of these extensions was necessary, and was therefore obtained. Different areas of the country utilized different limits as preference and practices of their respective geographic localities. The schedule of revised increased limit factors, is as follows:

Limits (in thousands) per claim/aggregate limit	Factor
25/50	1.00
25/75	1.09
50/50	1.15
50/150	1.21
100/100	1.26
100/300	1.32
200/200	1.39
250/250	1.44
250/750	1.57
300/300	1.47
500/500	1.63
500/1500	1.75
750/750	1.78
1000/1000	1.88
1250/1250	2.00
1500/1500	2.13
1750/1750	2.25
2000/2000	2.38
3000/3000	2.75

These changes are to be effective December 1, 1983.

This notification is filed pursuant to the Texas Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on October 7, 1983.

TRD-838098

James W. Norman
Chief Clerk
State Board of Insurance

Effective date: December 1, 1983

For further information, please call (512) 475-2950.

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. 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*.

Texas Alcoholic Beverage Commission

Monday, October 24, 1983, 10:30 a.m. The Texas Alcoholic Beverage Commission will meet in Suite 210, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda, the commission will approve the September 26, 1983, minutes; consider reports of the administrator and staff on agency activity; and approve an affidavit of destruction of tested alcoholic beverages.

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

Filed: October 11, 1983, 1:32 p.m.
TRD-838117

State Bar of Texas

Thursday, October 20, 1983, 10 a.m. The Executive-Budget Committee of the State Bar of Texas will meet in the President's Room, third floor, Texas Law Center, 1414 Colorado Street, Austin. Items on the agenda summary include reports of the president, executive director, president-elect, board chairman, Supreme Court liaison

member, immediate past president, general counsel, Professional Development Program director, and associate executive director; reports on budgetary matters and the 1984 convention; approval of capital expenditures; a report and recommendations from the Special Committee on IOLTA; a progress report on disciplinary procedural rules referendum, and division for local bar associations.

Contact: Evelyn Avent, 1414 Colorado Street, Austin, Texas 78711, (512) 475-4746.

Filed: October 12, 1983, 3:03 p.m.
TRD-838176

Texas Board of Chiropractic Examiners

Thursday-Saturday, October 27-29, 1983, 9:30 a.m., daily. The Texas Board of Chiropractic Examiners will meet in Building C-245, 1300 East Anderson Lane, Austin. Items on the agenda summary include enforcement hearings, with Dr. Milton Morter addressing the board concerning certification of the Board of Parker Chiropractic College, amendment and promulgation of

board rules pertaining to disclosure of charges to patients, and the filing of a motion of continuance and advertising of specialties.

Contact: Edna A. Parsons, 1300 East Anderson Lane, Suite C-245, Austin, Texas 78752, (512) 835-2006.

Filed: October 12, 1983, 9:34 a.m.
TRD-838170

Texas Cosmetology Commission

Sunday, October 23, 1983, 9 a.m. The Texas Cosmetology Commission will meet at 1111 Rio Grande Avenue, Austin. According to the agenda, the commission will elect officers, consider new procedures for a "show cause" hearing, discuss recommended rule changes, view a video of Mrs. Williams and Ron Resech, and consider previous meeting minutes. The commission also will meet in executive session.

Contact: Ron Resech, 1111 Rio Grande, Austin, Texas 78701, (512) 475-3304.

Filed: October 12, 1983, 2:24 p.m.
TRD-838175

**Interagency Council on Early
Childhood Intervention**

Monday, October 24, 1983, 9:30 a.m. The Interagency Council on Early Childhood Intervention will meet in Room T-407, 1100 West 49th Street, Austin. According to the agenda summary, the council will hear public comments in which no council action is required; consider approval of the September 21, 1983, minutes; hear staff, transportation survey and advisory committee reports and preliminary reports on research and evaluation; consider budget requests; appoint an Advisory Committee member; and review recommendations.

Contact: Louise Iscoe, 1100 West 49th Street, Austin, Texas, (512) 458-7342.

Filed: October 12, 1983, 2:24 p.m.
TRD-838177

Texas Education Agency

Monday, October 24, 1983, 9 a.m. The State Commission on School Accreditation of the Texas Education Agency (TEA) will meet in Room 101, TEA North Building, 1200 East Anderson Lane, Austin. Items on the agenda summary include approval of minutes; a status report on accreditation of public school districts as of October 1983; recommendations concerning accreditation status of public school districts and of non-public schools; and a discussion of options for dealing with nonpublic schools in the accreditation process.

Contact: Ben Branch, 201 East 11th Street, Austin, Texas 78701, (512) 834-4032.

Filed: October 12, 1983, 8:55 a.m.
TRD-838153

Texas Employment Commission

Thursday, October 13, 1983, 9 a.m. The Texas Employment Commission (TEC) met in emergency session in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda, the commission considered a motion for rehearing in commission Appeal 82-2170-10-0383, claimant Bonnie C. Williams. The emergency status was necessary to enable the commission to rule on a matter and to meet jurisdictional/statutory time requirements.

Contact: Courtenay Browning, TEC Building, Room 608, 15th Street and Con-

gress Avenue, Austin, Texas, (512) 397-4415.

Filed: October 12, 1983, 3:22 p.m.
TRD-838179

Office of the Governor

Friday, October 21, 1983, 3 p.m. The Highway Cost Index Committee of the Office of the Governor will meet in Room 215, Sergeant's Committee Room, State Capitol, Austin. Items on the agenda summary include certification of the actual amount of general revenue transfers to the state highway fund for fiscal year 1983 and the adjusted amount of general revenue transfers for fiscal year 1984.

Contact: William C. Hamilton, Governor's Budget Office, Sam Houston Building, seventh floor, 201 East 14th Street, Austin, Texas, (512) 475-2427.

Filed: October 12, 1983, 2:28 p.m.
TRD-838173

**Texas Health Facilities
Commission**

Friday, October 21, 1983, 9:30 a.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the following applications.

- Certificate of Need
 - Presbyterian Medical Center and Presbyterian Hospital of Las Colinas, Irving
AH82-1223-285
 - Pioneer Park Medical Center, Irving
AH83-0210-108
 - St. Paul Hospital Northwest, Coppell
AH83-0303-154
 - Humana Hospital Irving, Irving
AH83-0303-156
 - Midway Park General Hospital, Lancaster
AH83-0127-080
 - Stephenville General Hospital, Stephenville
AH83-0706-021
 - Memorial Hospital-Cleburne, Cleburne
AH83-0706-020
 - Healthscan, Garland
AO83-0126-066

Nunc Pro Tunc Order
Diagnostic Imaging Center, Ltd.,
San Antonio
AO83-0405-304

- Amendments of Certificate of Need Orders
 - San Antonio Community Hospital, San Antonio
AH82-0621-040A(082983)
 - Seven Acres Jewish Home for the Aged, Houston
AN81-i023-016A(090283)
 - Crane Memorial Hospital, Crane
AH81-1230-019A(091283)
 - Meadow Pines Hospital, Longview
AH82-0219-016A(091483)

Notice of Intent to Acquire an Existing Health Care Facility
Medical 21 Corporation, a Delaware corporation, Houston
AS83-0812-103

The commission also will consider an alleged violation by Garland Professional Scan Venture, doing business as Healthscan of Garland.

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

Filed: October 12, 1983, 9:23 a.m.
TRD-838163

Friday, October 21, 1983, 9:30 a.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the following application.

Certificate of Need
Medical Ancillary Services, Inc.,
Grand Prairie
AH83-0706-019

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

Filed: October 13, 1983, 9:30 a.m.
TRD-838197

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

Friday and Saturday, October 21 and 22, 1983, 8:30 a.m., daily. The Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids will meet in the Melrose Hotel, 3015 Oak Lawn, Dallas. From 8:30 a.m. Friday, to 10 a.m. Saturday, the board will conduct written examinations, and other state examinations covering trouble shooting, and audiometric, puretone, and sound field; earmold and tubing replacement. Following the examinations on Saturday, the board will hold its regular meeting to consider approval of the June 18, 1983, min-

utes, board action on examinations; an ad hoc committee report on a 30-day trial period, clarification of Article 4566, §19(3) as amended by Senate Bill 1100; committee reports and a committee appointment regarding continuing education; reports of the Nominating Committee, executive director, and president; and a date for the February and June 1984 board meetings.

Contact: Wanda F. Steward, 1212 Guadalupe Street, Suite 105, Austin, Texas 78701, (512) 475-3429.

Filed: October 12, 1983, 2:43 p.m.
TRD-838174

Texas Historical Commission

Saturday, October 22, 1983, 10 a.m. The State Board of Review of the Texas Historical Commission will meet in Senate Reception Room 214, State Capitol, Austin. According to the agenda summary, the board will elect officers, approve minutes of the last meeting, and review *National Register* nominations.

Contact: Peter Flagg Maxson, P.O. Box 12276, Austin, Texas 78711, (512) 475-3094.

Filed: October 12, 1983, 9:37 a.m.
TRD-838168

State Board of Insurance

Wednesday, October 19, 1983, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will conduct a public hearing in Docket 7411—reinsurance agreement whereby Croley Burial Association, Gilmer, will be reinsured by Croley Life Insurance Company, Gilmer.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: October 11, 1983, 12:15 p.m.
TRD-838106

Wednesday, November 9, 1983, 9 a.m. The State Board of Insurance will meet in the hearing room, DeWitt Greer Building, 11th and Brazos Streets, Austin. According to the agenda summary, the board will conduct a public hearing to consider the adoption of premium rates and amendments to the *Basic Manual of Rules, Rates, and*

Forms for the Writing of Title Insurance in the State of Texas, Rule 059.09.07.001.

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

Filed: October 11, 1983, 10:32 a.m.
TRD-838094

Texas Juvenile Probation Commission

Friday, October 14, 1983, 10 a.m. The Texas Juvenile Probation Commission submitted an emergency revised agenda for a meeting held at 2015 IH 35 South, Austin. According to the revised agenda, the commission introduced new members; approved the August 5, 1983, minutes, the fiscal year 1983 budget transfer, and discretionary fund criteria; heard the director's report; and considered a resolution of appreciation for former board members. The emergency status was necessary because of the urgent need to approve the fiscal year 1983 budget transfer.

Contact: Bill Anderson or Judy Culpepper, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: October 11, 1983, 10:39 a.m.
TRD-838137

Texas Board of Land Surveying

Wednesday, October 19, 1983, 8:30 a.m. The Executive Committee of the Texas Board of Land Surveying will meet in Suite 210 West, 1106 Clayton Lane, Austin. According to the agenda, the committee will conduct informal hearings on complaints filed against registered public surveyors David Bell, Jimmy Pogue, C. A. Thompson, and John McNutt.

Contact: Betty J. Pope, 1106 Clayton Lane, Suite 210 West, Austin, Texas, (512) 452-9427.

Filed: October 11, 1983, 10:35 a.m.
TRD-838097

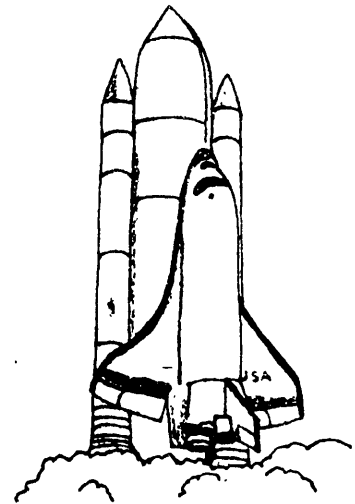
Texas Parks and Wildlife Department

Thursday, October 13, 1983, 9 a.m. The Parks and Wildlife Commission of the Texas Parks and Wildlife Department made an emergency addition to the agenda of a

meeting held in the Parks and Wildlife Headquarters Complex, Building B, 4200 Smith School Road, Austin. The addition concerned a resolution on the hunting season for ducks and geese. The emergency status was necessary as an urgent public necessity to properly notify the hunting public of future duck and geese hunting seasons.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 479-4802.

Filed: October 12, 1983, 3:59 p.m.
TRD-838192



Public Utility Commission of Texas

Wednesday, October 19, 1983, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the commission will consider permanent adoption of the proposed procedural rules package, §§21.1-21.181, as published in the September 9, 1983, issue of the *Texas Register*, and proposed §23.23, concerning rate design, and §23.61, concerning telephone utilities.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 11, 1983, 3:22 p.m.
TRD-838125

Thursday, October 20, 1983, 9 a.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider final orders in Dockets 3654, 4208, 4393, 4493, 4642, 4810, 4878, 4951, 4983, 5067, 5081, 5082, 5140, 5147, 5150, 5155, 5161,

5164, 5165, 5179, 5195, 5198, 5207, 5251, 5271, 5275, 5281, 5291, 5297, 5304, 5324, 5338, and 5381

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 12, 1983, 4:25 p.m.
TRD-838193

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

Friday, October 21, 1983, 2 p.m. A hearing in Docket 5404—petition of Texas Leisure, Inc., for modification of commission final orders in Dockets 4119 and 4717.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: October 12, 1983, 9:36 a.m.
TRD-838169

Thursday, October 27, 1983, 10 a.m. A prehearing conference in Docket 5307—application of Houston Lighting and Power Company for a proposed transmission line and associated substations in Austin, Harris, Waller, and Washington Counties.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 13, 1983, 9:44 a.m.
TRD-838199

Monday, October 31, 1983, 9 a.m. A prehearing conference in Docket 5409—complaint of Dr. C. Clifton Barnhart, against Sandy Mountain Development Company, Inc., regarding the billing.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 11, 1983, 10:37 a.m.
TRD-838103

Friday, November 4, 1983, 1:30 p.m. A prehearing conference in Docket 5400—application of H & J Water Company for approval of a meter installation charge.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 13, 1983, 9:43 a.m.
TRD-838200

Tuesday, November 8, 1983 1:30 p.m. A rate hearing in Docket 5426—customer pro-

test in §43(h), concerning a rate increase of Little Acres Water Supply in Hunt County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 11, 1983, 10:37 a.m.
TRD-838104

Monday, November 28, 1983, 10 a.m. A rescheduled hearing in Docket 5192—petition of the City of Lucas for removal of restrictions on General Telephone Company in the Southwest. The hearing was originally scheduled for October 24, 1983, as published at 8 TexReg 2773.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 11, 1983, 10:36 a.m.
TRD-838105

Thursday, December 15, 1983, 10:30 a.m. A hearing on the merits in Docket 5408—application of Anderson Water Company, Inc., for a rate increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: October 12, 1983, 2:24 p.m.
TRD-838178

Sunset Advisory Commission

Friday, October 28, 1983, 10 a.m. The Sunset Advisory Commission will meet in Room 410, Reagan Building, Austin. Items on the agenda include approval of the minutes, a discussion of compliance reviews and upcoming agency reviews, discussion and approval of across-the-board recommendations, other business, and setting the next meeting date on March 29 and 30, 1984.

Contact: Cindy Unsell, Reagan Building, Room 305, 1500 North Congress Avenue, Austin, Texas, (512) 475-1718.

Filed: October 13, 1983, 9:43 a.m.
TRD-838201

State Commission on Standards for the Teaching Profession

Thursday, October 20, 1983, 2 p.m. The Committee on Certification Programs and Requirements of the State Commission on Standards for the Teaching Profession will

meet in the Caucus Room, Austin Hilton Inn, 6000 Middle Fiskville Road, Austin. Items on the agenda include a State Board of Education request for the commission to review certification rules for critical shortage areas, a recommendation of passing scores for the preprofessional skills test, and issues related to proposed Provisional Certificate Program standards.

Contact: Dr. Edward M. Vodicka, 201 East 11th Street, Austin, Texas, (512) 834-4042.

Filed: October 11, 1983, 10:18 a.m.
TRD-838100

Thursday, October 20, 1983, 4 p.m. The Committee on Membership of the State Commission on Standards for the Teaching Profession will meet in the Caucus Room, Austin Hilton Inn, 6000 Middle Fiskville Road, Austin. According to the agenda, the committee will discuss nominations received for commission membership.

Contact: Dr. Edward M. Vodicka, 201 East 11th Street, Austin, Texas, (512) 834-4042.

Filed: October 11, 1983, 10:18 a.m.
TRD-838101

Friday, October 21, 1983, 6 p.m. The State Commission on Standards for the Teaching Profession will meet in the Highland Room, Austin Hilton Inn, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the commission will adopt the agenda; approve the minutes; and hear a preliminary report on attendance at the 36th annual Texas Conference on Teacher Education and reports from the Committee on Certification Programs and Requirements, concerning a State Board of Education request for the commission to review certification rules for critical shortage areas, recommendation of passing scores for a preprofessional skills test, and discussion of issues related to proposed Provisional Certificate Program standards, and the Committee on Membership, concerning discussion of nominations received for commission membership.

Contact: Dr. Edward M. Vodicka, 201 East 11th Street, Austin, Texas, (512) 834-4042.

Filed: October 11, 1983, 10:17 a.m.
TRD-838102

Texas Water Commission

Wednesday, December 7, 1983, 10 a.m. The Texas Water Commission will meet in Room 124A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Ac-

Texas Register

cording to the agenda, the commission will consider the following applications.

Application 4401 of John R. and Mary T. Woodall seeking a permit to divert 825 acre-feet of water per annum directly from the Brazos River, Brazos River Basin, for irrigation purposes in Robertson County.

Application 4400 of Margaret D. White seeking a permit to divert 10 acre-feet of water per annum directly from the North Bosque River, tributary of Bosque River, tributary of Brazos River, Brazos River Basin, for irrigation purposes in Bosque County.

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

Filed: October 11, 1983, 3:28 p.m.
TRD-838126, 838127

The Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas, on October 18, 1983. Dates, times, and agendas follow.

Thursday, December 8, 1983, 10 a.m. Application 630C of John Middleton seeking to amend Permit 601 to increase acreage authorized to be irrigated and to increase annual diversion to 2,700 acre-feet of water per year for irrigation purposes from Spindletop Bayou, Neches-Trinity Coastal Basin, in Chambers County.

Friday, December 9, 1983, 10 a.m. Application of Sulphur Springs Water District seeking to amend Permits 1591 and 2411 and to combine permits under Permit 1591, so that both reservoirs on White Oak Bayou, tributary of Sulphur River, Sulphur River Basin, may be operated as a single reservoir with a combined capacity of 17,838 acre-feet and a combined diversion rate of 35 cfs in Hopkins County for municipal purposes.

Friday, December 9, 1983, 10 a.m. Application 4403 of Rue A. Johnson and Rubye Kothmann seeking a permit to divert nine acre-feet of water per annum directly from the Llano River, tributary of Colorado River, Colorado River Basin, directly to the field and/or to an existing five acre-foot capacity off-channel reservoir for irrigation purposes in Llano County.

Wednesday, December 14, 1983, 10 a.m. Application of Frederick J. Kilian and wife, Beatrice C. Kilian, seeking to amend their portion of Certificate of Adjudication 23-2435, to change place of use of one acre-foot of water, to change the point of diversion on the Rio Grande, Rio Grande Basin, and to change the authorized purpose of use from irrigation to domestic use in Zapata County.

Additions to the above agenda:

Application of the City of Edinburg seeking to amend Certificate of Adjudication 23-256, to change the authorized use of 110.22 acres of Class "B" water rights from irrigation to municipal, to change the place of use, and to change the authorized point of diversion in Hidalgo County.

Application of M. L. Cave and wife, Linda Cave, seeking to amend their portion of Certificate of Adjudication 23-2435, to change the authorized place of use of water, to establish the point of diversion of one acre-foot of water, and to change the purpose of use from irrigation to domestic use in Zapata County.

Thursday, December 15, 1983, 10 a.m. Application 4404 of Richard L. Mar seeking a permit to divert and use 300 acre-feet of water per annum directly from Tenmile Creek, tributary of Trinity River, Trinity River Basin, diverting the water to an existing 20 acre-foot capacity off-channel reservoir for irrigation purposes in Dallas County.

Friday, December 16, 1983, 10 a.m. Application 4405 of the City of Camp Wood seeking a permit to divert and use 1,000 acre-feet of water per annum from an existing 0.03 acre-foot pumping sump constructed downstream from Kruger Spring on an unnamed tributary of the Nueces River known as Spring Creek, tributary of Nueces River, Nueces River Basin, for municipal use in Real County. The applicant also requests an unspecified amount of waste treatment plant effluent to be used for secondary irrigation of land in Real County.

Friday, January 27, 1984, 10 a.m. Application of Lester L. Tatum, Beaver Creek Developers, seeking to extend the time for completion of construction of modifications to four of the six dams and reservoirs authorized by Permit 3091 for recreational purposes in Burleson County, on unnamed tributaries of Berry and Davidson Creeks in the Brazos River Basin.

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

Filed: October 11, 1983, 3:29 p.m.
TRD-838128-838136

Regional Agencies

Meetings Filed October 11

The Brazos River Authority, Board of Directors, met in the Longhorn Room,

Stagecoach Inn, Salado, on October 17, 1983, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Central Counties Center for Mental Health and Mental Retardation Services, Board of Trustees, will meet at 302 South 22nd Street, Temple, on October 20, 1983, at 7:45 p.m. Information may be obtained from Steven B. Schnee, Ph.D., P.O. Box 518, Temple, Texas 76503.

The Eastland County Appraisal District, Board of Directors, will meet in the commissioners courtroom, Eastland County Courthouse, Eastland, on October 19, 1983, at 3 p.m. Information may be obtained from Steve Thomas, Box 914, Eastland, Texas 76448, (817) 629-8597.

The East Texas Council of Governments, Executive Committee, met in emergency session at 3800 Stone Road, Kilgore, on October 13, 1983, at 2 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Lee County Appraisal District, Board of Directors, will meet at 688 East Austin, Giddings, on October 20, 1983, at 7 p.m. Information may be obtained from James L. Dunham, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The San Antonio River Authority, Board of Directors, will meet in the conference room, 100 East Guenther Street, San Antonio, on October 19, 1983, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.

The South Texas Development Council, STED Corporation Board of Trustees, will meet in the Zapata Community Center, Zapata, on October 27, 1983, at 10:30 a.m. Information may be obtained from Roberto Mendiola, P.O. Box 2187, Laredo, Texas 78041, (512) 722-3995.

TRD-838124

Meetings Filed October 12

The Bastrop County Appraisal District, Board of Directors, will meet in the conference room, 803 Pine Street, County Courthouse, Bastrop, on October 21, 1983, at 2 p.m. Information may be obtained from Roy E. Humble, 705 Spring Street, Bastrop, Texas 78602, (512) 321-4316.

The Bexar Appraisal District, Board of Directors, met at 535 South Main, San Antonio, on October 17, 1983, at 5 p.m. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Region XVI Education Service Center, Board of Directors, will meet at the Amarillo Club, American National Bank, Amarillo, on October 20, 1983, at 12:45 p.m. Information may be obtained from Dr. Kenneth M. Laycock, Box 30600, Amarillo, Texas 79120, (806) 376-5521.

The Houston-Galveston Area Council, Project Review Committee, will meet in Salon Three, Marriott Hotel, 2100 South Brasewood, on October 18, 1983, at 8:30 a.m. Information may be obtained from Jack Steele, P.O. Box 22777, Houston, Texas 77027, (713) 627-3200.

The Lee County Appraisal District, Board of Review, will meet at 688 East Austin Street, Giddings, on October 20, 1983, at 7 p.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Pecan Valley Mental Health and Mental Retardation Region, Board of Trustees, met in emergency session at Our Place Day Treatment Center, 478 North Belknap, Stephenville, on October 14, 1983, at 12:30 p.m. Information may be obtained from Dr. Theresa Mulloy, Ed.D., P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The San Antonio River Authority, Board of Directors, will meet in the conference room, 100 East Guenther Street, San Antonio, on October 19, 1983, at 2 p.m. The Board of Trustees, Employees Retirement

Trust also will meet at the same location on October 19, 1983, at 3:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.

The West Central Texas Council of Governments, Regional Alcoholism Services, will meet at 1025 East North 10th Street, Abilene, on October 19, 1983, at 10 a.m. Information may be obtained from Sue Smith, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-838172

Meetings Filed October 13

The Region VIII Education Service Center, Board of Directors, will meet in Room 107, 100 North Riddle Street, Mount Pleasant, on October 27, 1983, at 7 p.m. Information may be obtained from Scott Ferguson, 100 North Riddle Street, Mount Pleasant, Texas 75455, (214) 572-6676.

The Region X Education Service Center, Board of Directors, will meet in the board room, 400 East Spring Valley Road, Richardson, on October 19, 1983, at 12:30 p.m. Information may be obtained from H. W. Goodgion, 400 East Spring Valley Road, Richardson, Texas, (214) 231-6301.

The Region XX Education Service Center, Board of Directors, will meet in the conference center, 1314 Hines Avenue, San Antonio, on October 26, 1983, at 3 p.m. Information may be obtained from Dr. Dwain M. Estes, 1314 Hines Avenue, San Antonio, Texas 78208, (512) 271-7611.

The Grayson County Appraisal District, Board of Directors, will meet in the commissioners courtroom, Grayson County Courthouse, Sherman, on October 19, 1983, at noon. Information may be obtained from Rita Neill, 124 South Crockett, Sherman, Texas 75090, (214) 893-9673.

The Jack County Appraisal District, Board of Directors, will meet at the Los Creek Building, 258 South Main, Jacksboro, on October 18, 1983, at 7 p.m. Information may be obtained from Doris G. Ray, P.O. Box 850, Jacksboro, Texas 76056, (817) 567-6301.

The Lamb County Appraisal District, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on October 20, 1983, at 8 p.m. Information may be obtained from Jack Samford, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

The Limestone County Appraisal District, Board of Directors, will meet in Room 6, Mexia City Hall, Mexia, on October 19, 1983, at 7 p.m. Information may be obtained from Clydene Hyden, P.O. Box 266, Mexia, Texas 76667, (817) 562-5385, ext. 35.

The Mills County Appraisal District will meet at the Mills County Courthouse, Goldthwaite, on October 20, 1983, at 6:30 p.m. Information may be obtained from Doran E. Lemke, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253.

The North Texas Municipal Water District, Board of Directors, will meet at 505 East Brown Street, Wylie, on October 27, 1983, at 4 p.m. Information may be obtained from Carl W. Riehn, Drawer C, Wylie, Texas 75098, (214) 442-5405, ext. 200.

TRD-838196

In Addition

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

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



Banking Department of Texas Applications To Acquire Control of State Banks

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On September 8, 1983, the banking commissioner received an application to acquire control of the Midland American Bank, Midland, by Lawrence H. Hahn, Lori Gayle Hahn, Leslie D. Hahn, all of Midland; and Cygne L. Nemir of Lafayette, Indiana.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar, Austin, Texas, 78705, (512) 475-4451.

Issued in Austin, Texas, on October 6, 1983.

TRD-838096 Archie P. Clayton III
General Counsel
Banking Department of Texas

Filed: October 11, 1983
For further information, please call (512) 475-4451.

On September 23, 1983, the banking commissioner received an application to acquire control of First State Bank, Wells, by Joe M. Pearson of Kilgore

On October 11, 1983, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on October 11, 1983.

TRD-838171 Archie P. Clayton III
General Counsel
Banking Department of Texas

Filed: October 12, 1983
For further information, please call (512) 475-4451.

Texas Department of Community Affairs Consultant Contract Award

This consultant contract award is filed under the provisions of Texas Civil Statutes, Article 6252-11c. The consultant proposal request was published in the July 26, 1983, issue of the *Texas Register* (8 TexReg 2822).

Contractor. The Texas Department of Community Affairs announces that the firm of Stanley, Wade, and Broome has been awarded an extension of its existing contract to include the period of October 1, 1983, through March 31, 1984, to provide auditing services as required to ensure the closeout of state administrative responsibilities under the Comprehensive Employment and Training Act (CETA) Program. The business address of Stanley, Wade, and Broome is 1101 Capital of Texas Highway, Building E-Suite 100, Austin, Texas 78746.

Contract Amount. The total cost of auditing services to be performed under the contract extension is presently estimated to be \$100,000.

Description of Services. The auditing services to be performed are associated with closeout of the CETA Program, and represent a continuation of services performed by the firm of Stanley, Wade, and Broome under TDCA Contract C200030.

Due Dates for Reports. Reports to be generated under this contract shall be submitted to TDCA upon completion throughout the period of performance of this contract.

Issued in Austin, Texas, on October 6, 1983.

TRD-838045 Douglas C. Brown
General Counsel
Texas Department of Community
Affairs

Filed: October 7, 1983
For further information, please call (512) 443-4100,
ext. 210.

Comptroller of Public Accounts Decision 13,676

For copies of the following opinion, contact Bob Bullock, Comptroller of Public Accounts, Attention: Administrative Law Judges, 111 East 17th Street, Austin, Texas 78774. Copies will be furnished without charge and edited to comply with confidentiality statutes.

Summary of Decision. The taxpayer contended that certain payments from its subsidiaries represented a "repayment of indebtedness" (principal only), and thus should not have been included as part of its gross receipts from doing business for purposes of allocating its taxable capital. The taxpayer argued that the debt was incurred by the subsidiaries when the taxpayer paid the salaries of several of the taxpayer's officers/employees who worked exclusively for the subsidiaries. The comptroller viewed the transfer of funds from the subsidiaries as payment for the services of the taxpayer's officers/employees, thus includible in the gross receipts of the taxpayer under 34 TAC §3.403.

Issued in Austin, Texas, on October 7, 1983.

TRD-838083 Bob Bullock
Comptroller of Public Accounts

Filed: October 7, 1983
For further information, please call (512) 475-1938.

Office of Consumer Credit Commissioner Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas

and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽¹⁾ Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 10/17/83-10/23/83	18.00%	18.00%
Monthly Rate— Article 1.04(c) ⁽¹⁾ 10/01/83-10/31/83	18.19%	18.19%
Standard Quarterly Rate—Article 1.04(a)(2) 10/01/83-12/31/83	18.52%	18.52%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 10/01/83-12/31/83	18.52%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 10/01/83-12/31/83	18.52%	N/A
Standard Annual Rate— Article 1.04(a)(2) ⁽²⁾ 10/01/83-12/31/83	18.52%	18.52%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 10/01/83-12/31/83	18.52%	N/A
Annual Rate Applica- ble to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 10/01/83-12/31/83	18.00%	N/A
Judgment Rate— Article 1.05, §2 11/01/83-11/30/83	10.00%	10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)
- (3) Credit for personal, family, or household use
- (4) Credit for business, commercial, investment, or other similar purpose

Issued in Austin, Texas, on October 12, 1983.

TRD-838162 Sam Kelly
Consumer Credit Commissioner

Filed: October 12, 1983
For further information, please call (512) 475-2111.

Texas Education Agency Correction of Error

Adoptions submitted by the Texas Education Agency contained several errors as published in the October 7, 1983, issue of the *Texas Register* (8 TexReg 3990).

On page 3993, the first sentence of §81.125(f) should have read:

(f) The commissioner of education shall have a complete record of the hearing made and transcribed and portions of the transcript pertaining to the appropriate subject matter area shall be mailed to each affected publisher who requests such transcripts and has agreed to pay for the cost.

On the same page, subsection (g) should have read:

(g) Within 10 days after the record is closed, the commissioner shall send copies of the record to members of the State Textbook Committee and regional education service centers.

On page 3994, §81.129(b)(1) should have read:

(1) complaints of violations of the statutes or the rules and procedural irregularities.

On page 3996, the first sentence of §81.131(b)(2)(C) should have read:

(C) Appointments to the textbook committee are made by the board of trustees upon the recommendation of the superintendent of schools and by the county board upon the recommendation of the county superintendent.

Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the following table. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend ment #	Date of Action
Austin	Atomic Energy Consultants	06-3434	Austin	0	09-07-83
Gonzales	Gonzales Warm Springs Rehabilitation Hospital	08-3485	Gonzales	0	09-08-83
Throughout Texas	Robert F. McKee, Incorporated	05-3488	Dallas	0	09-16-83
Throughout Texas	Lightfoot Wireline Service Co.	12-3478	Andrews	0	09-07-83
Throughout Texas	American Logging and Perforating	01-3479	Perryton	0	09-07-83

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend ment #	Date of Action
Mexia	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Abilene	West Texas Medical Center	04-2434	Abilene	9	09-08-83
Abilene	Hendrick Medical Center	04-2433	Abilene	12	09-08-83
Austin	St. David's Community Hospital	06-740	Austin	32	09-08-83
Azle	Eagle Mountain Area Suburban Hospital	05-3230	Azle	1	09-13-83

Baytown	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Beaumont	E I du Pont de Nemours & Company, Inc.	10-517	Beaumont	39	09-15-83
Bonham	Fannin County Hospital	05-3331	Bonham	1	09-13-83
Bruni	Uranium Resources, Inc.	08-2704	Bruni	10	09-01-83
Cases	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Comanche	Comanche Community Hospital	04-3234	Comanche	1	09-13-83
Corpus Christi	Koch Refining Company	08-322	Corpus Christi	14	09-15-83
Corpus Christi	Spohn Hospital	08-2495	Corpus Christi	5	09-08-83
Dallas	St. Regis Paper Company	05-803	Dallas	13	09-15-83
Dallas	Medical City Dallas Hospital	05-1976	Dallas	37	09-13-83
Dallas	Girsch Field Services, Inc.	05-334	Dallas	21	09-14-83
Decatur	Decatur Community Hospital	05-2382	Decatur	2	09-13-83
Deer Park	Soltex Polymer Corporation	11-88	Deer Park	32	09-15-83
Eagle Pass	Maverick County Memorial Hospital	09-2555	Eagle Pass	13	09-08-83
El Paso	PAATH LAB, P.A.	03-2667	El Paso	6	09-08-83
Eldon	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Fort Worth	Texas College of Osteopathic Medicine	05-2518	Fort Worth	4	09-14-83
Fort Worth	All Saints Episcopal Hospital	05-2212	Fort Worth	10	09-08-83
Garland	Garland Community Hospital	05-2333	Garland	8	09-13-83
Groesbeck	South Limestone Hospital	06-3426	Groesbeck	1	09-16-83
Hereford	Helly Sugar Corporation	01-725	Hereford	10	09-09-83
Hereford	Deat Smith General Hospital	01-3111	Hereford	1	09-12-83
Houston	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Houston	Imaging Services Corporation	05-1663	Houston	67	09-12-83
Houston	Exxon Corporation	11-3213	Houston	1	09-15-83
Houston	Baylor College of Medicine	11-680	Houston	20	09-08-83
Houston	Monitoring Services, Inc.	11-3450	Friendswood	1	09-07-83
La Porte	BF Goodrich Company	11-2469	La Porte	3	09-15-83
Longview	Good Shepherd Medical Center	07-2411	Longview	14	09-08-83
Lubbock	Texas Tech University	02-1869	Lubbock	28	09-13-83
Lubbock	Texas Tech University Health Science Center	02-1869	Lubbock	29	09-16-83
McAllen	McAllen Methodist Hospital	08-1713	McAllen	31	09-13-83
McAllen	Rio Grande Cancer Treatment Center	08-2205	McAllen	15	09-08-83
Pasadena	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Richmond	Houston Lighting and Power	11-2063	Houston	21	09-15-83
San Antonio	Drs. Norman, Brannan, Riley, Works, Stewart and Assoc.	09-325	San Antonio	58	09-13-83
San Antonio	St. Luke's Lutheran Hospital	09-3309	San Antonio	2	09-13-83
San Leon	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Strang	Houston Lighting and Power	11-2063	Houston	21	09-15-83
Three Rivers	Intercontinental Energy Corporation	08-2238	Three Rivers	10	10-09-83
Throughout Texas	Phillips Petroleum Company	01-2459	Bartlesville, OK	4	09-15-83
Throughout Texas	Tracerco Corporation	11-3096	South Houston	14	09-15-83

Throughout Texas	Professional Service Industries, Inc.	11 931	Oak Brook, II	55	09 15 83
Throughout Texas	Monsanto Chemical Intermediates Company	11 219	Alvin	40	09 13 83
Throughout Texas	Professional Service Industries, Inc.	09-2845	Oak Brook, II	4	09 14 83
Throughout Texas	Hawkeye Weld Interests Systems Inc.	11 2930	Barker	6	09/14/83
Throughout Texas	Superior Machine, Inc.	08 3242	Victoria	1	09 15 83
Throughout Texas	McMorries and Burns, Inc.	01 2839	Dumas	3	09 07 83
Throughout Texas	Permian Industrial X-Ray, Inc.	12 2835	Odeesa	11	09 13 83
Throughout Texas	Houston Inspection Laboratories, Inc.	11 2011	Houston	10	09 13 83
Throughout Texas	Perless Manufacturing Company	05 156	Dallas	27	09 13 83
Throughout Texas	City of Wichita Falls	04 3217	Wichita Falls	2	09 07 83
Throughout Texas	Professional Service Industries, Inc.	11 931	Oak Brook, II	54	09 07 83
Throughout Texas	McEvoy Oilfield Equipment Company	11 79	Houston	30	09 08 83
Throughout Texas	G & C X-Ray, Inc.	08 3326	Corpus Christi	4	09 08 83
Throughout Texas	R & R X-Ray	11 3091	Houston	1	09 08 83
Throughout Texas	Chicago Bridge & Iron Company	11 1317	Houston	27	09 08 83
Throughout Texas	Halliburton Services	07 1835	Tyler	17	09 07 83
Tyler	The University of Texas Health Center at Tyler	07-1796	Tyler	15	09 14 83
Tyler	Medical Center Hospital	07 977	Tyler	37	09 14 83
Waco	Hilcrest Baptist Medical Center	06 2326	Waco	5	09 13 83
Waco	Hilcrest Baptist Medical Center	06 845	Waco	39	09 13 83
West	West Community Hospital	06 2979	West	8	09 14 83
Wheeler	Parkview Hospital	01 3252	Wheeler	1	09 08 83
RENEWALS OF EXISTING LICENSES ISSUED					
Location	Name	License #	City	Amendment #	Date of Action
Abilene	Anderson Claxton and Company	04 2414	Abilene	3	09 07 83
Austin	The University of Texas at Austin	06 485	Austin	37	09 13 83
Austin	Robert E. Rock MD	06 570	Austin	11	09 08 83
Colorado City	Root Memorial Hospital	04 1643	Colorado City	9	09 08 83
Denton	City of Denton	05-2873	Denton	1	09 15 83
Denton	Texas Woman's University	05 304	Denton	24	09 12 83
El Paso	B A Hallum MD and Paul S. Gulbas MD	03 1954	El Paso	4	09 07 83
Houston	Stautter Chemical Company	11 1864	Houston	4	09 09 83
Throughout Texas	Texas Steel Company	05-163	Fort Worth	21	09 14 83
Throughout Texas	General Electric Medical Systems	05 2800	Dallas	3	09 16 83
Throughout Texas	Petrofac, Inc.	07 2363	Tyler	5	09 08 83
Throughout Texas	United Logging Inc.	06-1919	Brvan	-	09 07 83
TERMINATIONS OF LICENSES ISSUED					
Location	Name	License #	City	Amendment #	Date of Action
Dallas	American Soils Limited, Inc.	05 2201	Dallas	4	09 07 83
Nederland	U. S. Port de Nemours & Company, Inc.	10-2386	Beaumont	5	09 15 83

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau

of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment, the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment, the issuance of the license(s) will not be inimical to the health and safety of the public or the environment, and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county, and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Eacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday through Friday (except holidays).

Issued in Austin, Texas, on October 11, 1983

TRD-838151 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: October 12, 1983

For further information, please call (512) 835-7000.

Public Hearings

The Texas Department of Health will conduct the following two public hearings concerning municipal solid waste disposal site applications.

(1) Application 1554 of Fort Bend County for a permit to operate a proposed Type I municipal solid waste disposal site to be located approximately 1 1/2 miles west-northwest of the intersection of U. S. Highway 59 and State Highway 36, on the north side of Klauke Road, approximately 1/4 mile west of the intersection of Klauke

Road and Blume Road, adjacent to the west side of the county's existing 40.35-acre landfill west of Rosenberg, in Fort Bend County. The hearing will be held on Tuesday, November 15, 1983, at 9:30 a.m., in the commissioners courtroom, Fort Bend County Courthouse Annex, Richmond.

(2) Application 1496 of the City of Robstown for a permit to operate a proposed Type I municipal solid waste disposal site to be located near the northeast city limits of Robstown, approximately ¼ mile northeast of the intersection of State Highway 44 and U. S. Highway 77, approximately ¼ mile east of the U. S. Highway 77 and Magee Lane junction, adjacent to the east side of the city's existing solid waste disposal site and sewage treatment plant, in Nueces County. The hearing will be held on Tuesday, November 22, 1983, at 9 a.m., in the council chambers, City Hall, 101 Main Street, Robstown, Texas.

Issued in Austin, Texas, on October 11, 1983.

TRD-838150 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: October 12, 1983

For further information, please call (512) 458-7271.

Texas Health Facilities Commission Applications Accepted for Amendment, Declaratory Ruling, and Notices of Intent

Notice is hereby given by the Texas Health Facilities Commission of applications accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research project; NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to any of the above-stated applications, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice. If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P.O. Box 50049, Austin, Texas 78763, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party.

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

B. B. & D., Joint Venture for Sunshine Care
Nursing Center, Arlington
AN81-0630-019A(091383)

CN/AMD—Request for an increase in the project cost from \$1.195 million to \$1.285 million, an extension of the completion deadline from September 30, 1983, to September 30, 1984, and an increase in the amount of square footage to be constructed from 26,605 to 30,050 square feet in Certificate of Need AN81-0630-019, which authorized the certificate holder to construct a 120-bed intermediate care nursing home in Arlington.

Jewell Enterprises, a Texas general partnership,
Arlington
AN83-1005-196

NIEH—Request for a declaratory ruling that a certificate of need is not required for Jewell Enterprises, a Texas general partnership, to acquire by purchase Hillside Manor Nursing Center, an existing 120-bed ICF nursing facility located in Gatesville, from Rotunda Retirement and Convalescent Facility, Inc., a Texas corporation.

Stonebrook Properties, Inc., Arlington
AN83-1005-197

NIEH—Request for a declaratory ruling that a certificate of need is not required for Stonebrook Properties, Inc., to acquire by lease Hillside Manor Nursing Center, an existing 120-bed ICF nursing facility located in Gatesville, from Jewell Enterprises, a Texas general partnership.

Issued in Austin, Texas, on October 12, 1983.

TRD-838164 John R. Neal
General Counsel
Texas Health Facilities
Commission

Filed: October 12, 1983

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

Houston-Galveston Area Council Request for Proposals

Subject. Development of integrated transportation/land use models for the Houston-Galveston region.

Scope of Work. Furnished upon request.

Submittal Deadline. November 15, 1983.

Number of Copies. Ten.

Submit To. Michael Weaver, Manager, Transportation Department, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227.

The proposed consultant contract would develop an in-house capability to quickly examine proposed major

transportation improvements investments and their effect on regional growth. The Houston-Galveston Area Council has previously retained Dr. Stephen Putman's professional services to present and calibrate his Integrated Transportation Land Use Planning Models. The Houston-Galveston Area Council would intend to award this contract to Dr. Putman unless a better offer is submitted. Further inquiries as to the proposed scope of work should be directed to Michael Weaver, Manager, Transportation Department, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227.

Issued in Houston, Texas, on October 7, 1983

TRD-838095 Michael Weaver
Transportation Manager
Houston-Galveston Area Council

Filed: October 11, 1983

For further information, please call (713) 627-3200.

Texas Department of Human Resources Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Resources (TDHR) requests all interested parties to submit technical proposals to provide consulting services to the Office for Information Systems. Funds expended under this contract will not exceed \$100,000.

Description of Services. The objectives of this contract are to assist the agency in identifying any potential problem areas which may adversely impact the WelNet applications development schedule as currently construed and developing a plan for operating the network.

Closing Date. Closing date for offers to provide these services is November 14, 1983.

Effective Date. The contract will become effective on or about December 5, 1983, and will terminate by August 31, 1984.

Procedure for Selecting Consultant. The TDHR will select the consultant firm through recommendations of a review committee established for this purpose. This contract will be the continuation of a study begun in January 1983 by Arthur Andersen & Company. It is the intent of the TDHR to continue this work with the firm of Arthur Andersen & Company, unless a substantially better offer is received. Selection of consultant will be based on the following criteria: demonstrated company experience with and capability of supporting large installations of data processing equipment, particularly in the areas of networked and distributed technologies (20%); demonstrated ability of individuals, selected by name, education, and experience (40%); and methodology and timeliness of recommended approach to problems (40%). Any proposal evaluated with a score of less than 80% will not receive further consideration. The top five proposals which have scores of 80% or more will be evaluated

in terms of cost effectiveness. A final decision will be made in terms of the most reasonable cost.

Terms and Conditions of Contract. The following terms and conditions must be accepted by all respondents:

(1) The TDHR reserves the right to reject any and all proposals.

(2) The selected consultant will not be eligible to participate in any subsequent hardware/software procurement contracts arising out of the study. This does not preclude negotiations of subsequent consulting contracts with the consultant selected.

(3) All information generated is the exclusive property of the TDHR.

(4) Cost for travel, lodging, telephone, and other services required by the selected consultant must be included in the overall cost.

(5) The selected consultant must participate in at least two progress report meetings, time of meetings at discretion of the TDHR, and a final review and summarization meeting.

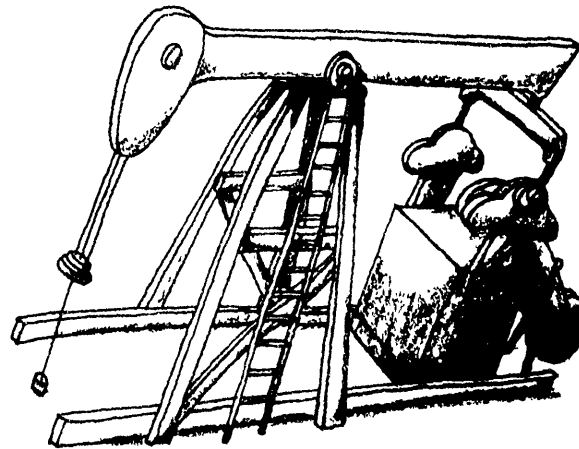
Contact Person. Any consultant interested in providing the described services may obtain a statement of work by contacting Kay Atkinson, Mail Code 823-X, Contract Monitor, Texas Department of Human Resources, Processing Services Division, P.O. Box 2960, Austin, Texas 78769, (512) 443-7711, ext. 440.

Issued in Austin, Texas, on October 11, 1983.

TRD 838149 Marlin W. Johnston
Commissioner
Texas Department of Human Resources

Filed: October 11, 1983

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



Texas Savings and Loan Department

Applications for Charter and Hearings Thereon

Application has been made to the savings and loan commissioner of Texas for the approval of a charter for Fi-

Financial Savings—A Savings Association, 2777 Stemmons Freeway, Dallas, Dallas County. A hearing on the application will be held at 9 a.m. on October 18, 1983, in the offices of the Savings and Loan Department of Texas, 1004 Lavaca, Austin, pursuant to authority and jurisdiction granted by the Texas Savings and Loan Act, Texas Civil Statutes, Article 852a.

The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which record the commissioner shall determine whether to grant or deny the application.

The particular sections of the statute involved are §§2.01-2.09 and 11.11. The particular rules involved are 7 TAC §§51.1-51.13. Such rules are on file with the *Texas Register*, Office of the Secretary of State, or may be seen at the department's offices.

The applicants for charter assert that the prerequisites, where applicable, set forth in §§2.02-2.06 of the Act, have been met, the character responsibility and general fitness of the persons named in the articles of incorporation are such as to command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted and that the proposed association will have qualified full-time management; there is a public need for the proposed association, and the volume of business in the community in which the proposed association will conduct its business is such as to indicate a profitable operation, and the operation proposed association will not unduly harm any existing association.

Anyone desiring to oppose this application may do so by appearing at the scheduled hearing, however, it is requested, and advisable, that persons who plan to oppose this application notify the commissioner of their intentions, in writing, at P.O. Box 1089, Austin, Texas 78767.

Issued in Austin, Texas, on September 13, 1983

TRD-838090 L. L. Bowman III
Commissioner
Texas Savings and Loan
Department

Filed: October 7, 1983
For further information, please call (512) 475-7991.

Application has been made to the savings and loan commissioner of Texas for the approval of a charter for Preferred Savings Association, 11757 Katy Freeway, Houston, Harris County. A hearing on the application will be held at 9 a.m. on October 17, 1983, in the offices of the Savings and Loan Department of Texas, 1004 Lavaca, Austin, pursuant to authority and jurisdiction granted by the Texas Savings and Loan Act, Texas Civil Statutes, Article 852a.

The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which record the commissioner shall determine whether to grant or deny the application.

The particular sections of the statute involved are §§2.01-2.09 and 11.11. The particular rules involved are 7 TAC §§51.1-51.13. Such rules are on file with the *Texas Register*, Office of the Secretary of State, or may be seen at the department's offices.

The applicants for charter assert that the prerequisites, where applicable, set forth in §§2.02-2.06 of the Act, have been met, the character responsibility and general fitness of the persons named in the articles of incorporation are such as to command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted and that the proposed association will have qualified full-time management, there is a public need for the proposed association, and the volume of business in the community in which the proposed association will conduct its business is such as to indicate a profitable operation, and the operation proposed association will not unduly harm any existing association.

Anyone desiring to oppose this application may do so by appearing at the scheduled hearing; however, it is requested, and advisable, that persons who plan to oppose this application notify the commissioner of their intentions, in writing, at P.O. Box 1089, Austin, Texas 78767.

Issued in Austin, Texas, on September 26, 1983

TRD-838091 L. L. Bowman III
Commissioner
Texas Savings and Loan
Department

Filed: October 7, 1983
For further information, please call (512) 475-7991.

Application has been made to the savings and loan commissioner of Texas for the approval of a charter for New Caddo Savings Association, 412 Grand Street, Marshall, Harrison County. A hearing on the application will be held at 2 p.m. on October 19, 1983, in the offices of the Savings and Loan Department of Texas, 1004 Lavaca, Austin, pursuant to authority and jurisdiction granted by the Texas Savings and Loan Act, Texas Civil Statutes, Article 852a.

The nature and purpose of the hearing is to accumulate a record of pertinent information and data in support of the application and in opposition to the application, from which record the commissioner shall determine whether to grant or deny the application.

The particular sections of the statute involved are §§2.01-2.09 and 11.11. The particular rules involved are 7 TAC §§51.1-51.13. Such rules are on file with the *Texas Register*, Office of the Secretary of State, or may be seen at the department's offices.

The applicants for charter assert that the prerequisites, where applicable, set forth in §§2.02-2.06 of the Act, have been met; the character responsibility and general fitness of the persons named in the articles of incorporation are such as to command confidence and warrant belief that the business of the proposed association will be honestly and efficiently conducted and that the proposed associa-

tion will have qualified full-time management; there is a public need for the proposed association, and the volume of business in the community in which the proposed association will conduct its business is such as to indicate a profitable operation; and the operation proposed association will not unduly harm any existing association.

Anyone desiring to oppose this application may do so by appearing at the scheduled hearing; however, it is requested, and advisable, that persons who plan to oppose this application notify the commissioner of their intentions, in writing, at P.O. Box 1089, Austin, Texas 78767.

Issued in Austin, Texas, on September 27, 1983.

TRD 838092 L. L. Bowman III
Commissioner
Texas Savings and Loan
Department

Filed: October 7, 1983
For further information, please call (512) 475-7991.

Applications for Change of Control of Associations

Texas Civil Statutes, Article 852a, §11.20, requires any person who intends to acquire control of a state-chartered savings and loan association to file an application with the savings and loan commissioner for approval of the transaction. A hearing may be held if the application is denied by the commissioner.

On September 2, 1983, the savings and loan commissioner received an application for approval of the acquisition of control of Irving Savings Association, Irving, by David L. Hilling and Amy Hilling.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

Issued in Austin, Texas, on October 11, 1983.

TRD 838122 Russell R. Oliver
General Counsel
Texas Savings and Loan
Department

Filed: October 11, 1983
For further information, please call (512) 475-7991.

On September 13, 1983, the savings and loan commissioner received an application for approval of the acquisition of control of Concho Valley Savings & Loan Association, San Angelo, by Sutton Allison, John Cargile, Omar A. Drubing, John Gandy, Frank Jarrell, Glen Kirby, J. Gordon McGill, Pierce Miller, Robert J. Palmer, Lou Slaughter, Lester E. Smith, Jr., Hunter Strain, Cal Sugg, Jr., and I. W. Terry.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

Issued in Austin, Texas, on October 11, 1983.

TRD-838123 Russell R. Oliver
General Counsel
Texas Savings and Loan
Department

Filed: October 11, 1983
For further information, please call (512) 475-7991.

On September 14, 1983, the savings and loan commissioner received an application for approval of the acquisition of control of Texana Savings and Loan Association, Texarkana, by Woody F. Lemons.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

Issued in Austin, Texas, on October 11, 1983.

TRD 838119 Russell R. Oliver
General Counsel
Texas Savings and Loan
Department

Filed: October 11, 1983
For further information, please call (512) 475-7991.

On September 19, 1983, the savings and loan commissioner received an application for approval of the acquisition of control of Caddo Savings Association, Marshall, by George G. Curb and Sam M. Stewart.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

Issued in Austin, Texas, on October 11, 1983.

TRD 838120 Russell R. Oliver
General Counsel
Texas Savings and Loan
Department

Filed: October 11, 1983
For further information, please call (512) 475-7991.

On October 6, 1983, the savings and loan commissioner received an application for approval of the acquisition of control of Northwest Savings Association, Austin, by First Franklin Financial, Inc., and Franklin Savings Association of McAllen.

Any inquiries may be directed to the Texas Savings and Loan Department, 1004 Lavaca, Austin, Texas 78701, (512) 475-7991.

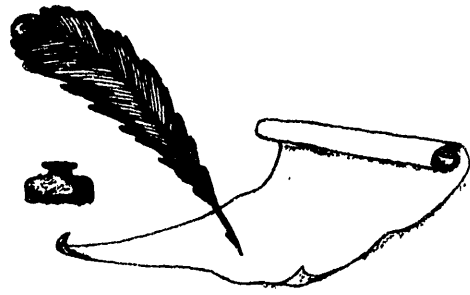
Issued in Austin, Texas, on October 11, 1983.

TRD-838121 Russell R. Oliver
General Counsel
Texas Savings and Loan
Department

Filed: October 11, 1983
For further information, please call (512) 475-7991.

**Office of the Secretary of State
Texas Register Schedule Variation**

Due to the November 8, 1983, Constitutional Amendment Election, the filing deadlines for documents to be published in the November 11, 1983, issue of the *Texas Register* have been changed. Rules for the November 11 issue must be filed by 10 a.m. on Friday, November 4, and Open Meetings notices must be filed by 10 a.m. on Monday, November 7. This schedule variation will not affect the mailing date of the issue.



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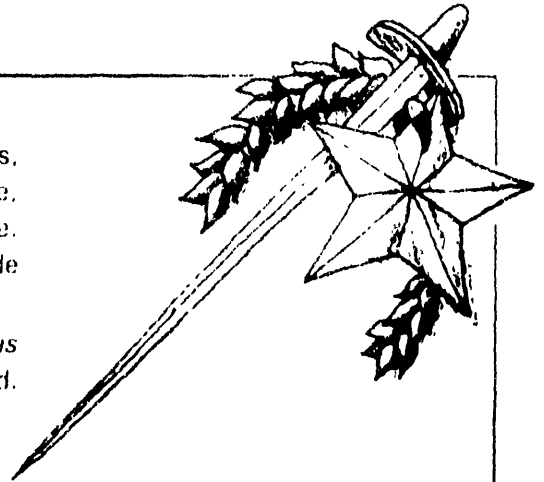
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