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# TEXAS REGISTER

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The *Texas Register* is currently in the process of converting to the numbering system found in the *Texas Administrative Code* (TAC). To aid the reader in this conversion, both the 10-digit *Register* number and the new TAC number will be listed for agencies whose rules have been published in the TAC. Emergency, proposed, and adopted rules sections of the *Register* are divided into two classifications: codified and noncodified. Codified rules appear in title number order. Non-codified rules appear in alphabetical order as they have in the past. An "Index of TAC Titles Affected" appears at the end of this issue.

Titles 1, 4, 7, 10, 13, 16, 19, 22, 25, 31, 34, 37, and 43 only of the TAC have now been published. Documents classified in the *Texas Register* to titles not yet published and certain documents affecting titles of the code have been accepted in the non-TAC format and may be renumbered or revised, or both, when initially codified in the TAC.

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

1 is the title (agencies grouped together by subject title which are arranged alphabetically)

TAC is the *Texas Administrative Code*

§27.15 is the section number (27 represents the chapter number and 15 represents the individual rule within the chapter)

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

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*Cover illustration represents Elisabet Ney's statue of Stephen F. Austin, which stands in the foyer of the State Capitol.*

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# TEXAS REGISTER

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**David A. Dean**  
Secretary of State

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## The Attorney General

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Texas Civil Statutes, Article 4399, requires the Attorney General of Texas to give written opinions to certain public officials. The Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §7, requires that a governmental body which receives a request for release of records seek a decision of the attorney general if the governmental body determines that the information may be withheld from public disclosure. Opinions and open records decisions issued under the authority of these two statutes, as well as the request for opinions and decisions, are required to be summarized in the *Texas Register*.

Copies of opinion requests may be obtained from the Opinion Committee, Attorney General's Office, Supreme Court Building, Austin, Texas 78711, telephone (512) 475-5445. Published opinions and open records decisions may be obtained by addressing a letter to the File Room, Fourth Floor, P.O. Box 12548, Austin, Texas 78711-3824, or by telephoning (512) 475-3744. A single opinion is free; additional opinions are \$1.00 a copy.

## Opinions

### Summary of Opinion MW-390 (RQ-677)

Request from Julio Garcia, district attorney, Dimmit, Zapata, and Webb Counties, concerning whether a meeting called by a district judge and attended by a county judge and two county commissioners is subject to the requirements of the Open Meetings Act.

**Summary of Opinion:** The presence of the county judge and two members of the commissioners court at an assembly constitutes a "quorum" of the court for purposes of Texas Civil Statutes, Article 6252-17. Whether final action is taken is not determinative of whether a "meeting" has occurred within that statute. One need not participate in calling an illegally closed meeting to be subject to the penalty provisions of §4(a) of the statute. The question of whether the particular conference at issue violated the statute is a fact question which is beyond the scope of the opinion process.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818310      Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

## Open Records Decisions

### Summary of Open Records Decision ORD-287 (RQ-495)

Request from Edward H. Perry, assistant city attorney, Dallas, concerning a request for records of the community service division of a police department.

**Summary of Decision:** The City of Dallas received a request under the Open Records Act for a notation kept by the Community Services Division of the police department concerning an individual. This information did not constitute law enforcement information within §(3)(a)(8) of the Open Records Act. It was received from a private social service agency operating pursuant to a contract with the Texas Department of Human Resources and subject to the legal restriction that affects the department. The notation could be withheld pursuant to §(3)(a)(10) of the Open Records Act to the extent that it constituted opinions or advice.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818308      Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

### Summary of Open Records Decision ORD-288 (RQ-608)

Request from Donald J. Walheim of Schulman, Walheim, and Beck, Inc., San Antonio, concerning whether a report on a former high school principal is available to him under the Open Records Act.

**Summary of Decision:** The Edgewood Independent School District received a request under the Open Records Act from a former employer for a report of an investigation of the handling of public funds while employed by the district. The report could be withheld pursuant to §(3)(a)(3), the litigation exception. Section (3)(a)(2) of the Open Records Act does not provide a special right of access for public employees to their personnel file information which overrides the §(3)(a)(3) exemption. Open Records Decision 200 is overruled to the extent that it conflicts with this decision.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818309      Susan L. Garrison, Chairwoman  
Opinion Committee  
Office of the Attorney General

For further information, please call (512) 475-5445.

Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, an agency must give at least 30 days notice of its intention to promulgate certain action on a rule. The purpose of proposing rule action is to give interested persons an opportunity to review the proposal and make oral or written comments. "Opportunity for public hearing must be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members." Proposed action is effective as notice on the date published in the *Register*. Unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice, the proposed date of adoption is 30 days after publication. The notice must include a brief explanation of the proposed action; a fiscal impact statement; a request for comments on the proposed action from any interested person; the text of the proposed action, in compliance with the rules of the Texas Register Division; and a statement of the legal authority under which the proposed action is to be promulgated. The certification information, which includes the earliest possible date that the agency may file notice to adopt the proposal, follows each published submission of proposed action. A telephone number for further information is also published.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."

**Symbology**—Changes to existing material are indicated in *bold italics*. [Brackets] indicate deletion of existing material.

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## CODIFIED

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### TITLE 1. ADMINISTRATION

#### Part IV. Office of the Secretary of State

##### Chapter 91. Texas Register

###### Filing of Documents

The Office of the Secretary of State proposes amendments to §91.21 (004.65.03.001) concerning documents accepted and published by the Texas Register Division. House Bill 1228, 67th Legislature, Regular Session, requires the Office of Consumer Credit Commissioner to file notice of rate ceilings and rate bracket adjustments with the Texas Register Division.

Charlotte Scroggins, Texas Register Division director, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications on state or local

governments as a result of enforcing or administering the rule.

The director has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be the ability of the public to keep abreast of the current fluctuations in commercial and consumer rate ceilings and the different types of rate ceilings.

(B) There will be no economic cost to individuals required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charlotte Scroggins, director, Texas Register Division, P.O. Box 13824, Austin, Texas 78711-3824.

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

David A. Dean  
November 16, 1981

The amendments to §91.21 (004.65.03.001) are proposed under Texas Civil Statutes, Article 6252-13a, §8(b), which provides the Office of the Secretary of State with the authority to promulgate rules to ensure the effective administration of the Administrative Procedure and Texas Register Act.

*§91.21 (004.65.03.001). Compliance; Nonacceptance of Documents.*

(a) The following documents shall be filed with the Texas Register Division, Office of the Secretary of State, and published by the secretary of state in the *Register*: emergency, proposed, and final rulemaking action; notices of open meetings; executive orders of the Governor of Texas; summaries of requests for opinions, opinions, and open records decisions of the Attorney General of Texas; notices filed by the banking commissioner pursuant to Texas Civil Statutes, Article 342-401a(B)(6); notices filed by the savings and loan commissioner pursuant to Texas Civil Statutes, Article 5069-1.07; *notices filed by the Office of Consumer Credit Commissioner pursuant to Texas Civil Statutes, Article 5069-1.04*; notices filed by agencies, regional councils of government, and the Texas State Library pursuant to Texas Civil Statutes, Article 6252-11c; and miscellaneous notices of general interest to the public of Texas.

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

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818293      David A. Dean  
Secretary of State

Proposed Date of Adoption: December 25, 1981  
For further information, please call (512) 475-7886.

The Office of the Secretary of State proposes new §91.35 concerning the procedure for filing notice of rate ceilings with the Texas Register Division.

Charlotte Scroggins, Texas Register Division director, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications on state or local governments as a result of enforcing or administering the rule.

The director has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be the ability of state agencies to have a source of reference when drawing up documents for submission to the *Register*.

(B) There will be no economic cost to individuals required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charlotte Scroggins, director, Texas Register Division, P.O. Box 13824, Austin, Texas 78711-3824.

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

David A. Dean  
November 16, 1981

The new section is proposed under Texas Civil Statutes, Article 6252-13a, §8(b), which provides the Office of the Secretary of State with the authority to promulgate rules to ensure the effective administration of the Administrative Procedure and Texas Register Act.

**§91.35. Procedure for Filing Notice of Rate Ceiling.**

(a) Each notice required to be submitted by the Office of Consumer Credit Commissioner for publication in the *Register*, pursuant to Texas Civil Statutes, Article 5069-1.04, shall be filed in accordance with §91.22 (004.65.03.002) of this title (relating to Transmittal Methods; Receipt; Acknowledgment).

(b) Each copy of each notice shall be accompanied by the appropriate submission form, completed and verified, according to the requirements set forth in §91.95 (004.65.07.005) of this title (relating to Form for Miscellaneous Document).

(c) The notice shall be published in the next issue of the *Register* following the date the notice is received by the Texas Register Division, subject to the deadline requirements contained in §91.113 (004.65.08.003) of this title (relating to Deadlines).

Issued in Austin, Texas, November 16, 1981.

Doc. No. 818294      David A. Dean  
   Secretary of State

Proposed Date of Adoption: December 25, 1981  
For further information, please call (512) 475-7886.

## Document Format

The Office of the Secretary of State proposes amendments to §91.58 concerning certification of documents submitted to the Texas Register Division. The certification of legal review and the certification by an agency official have been combined in order to have one certification block at the end of rules instead of two separate certifications.

Charlotte Scroggins, Texas Register Division director, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications on state or local governments as a result of enforcing or administering the rule.

The director has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be the elimination of the problems that arise with duplicate signatures of certification.

(B) There will be no economic cost to individuals required to comply with the rule as proposed.

Comments on the proposal may be submitted to Charlotte Scroggins, director, Texas Register Division, P.O. Box 13824, Austin, Texas 78711-3824.

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

David A. Dean  
November 16, 1981

The amendments are proposed under Texas Civil Statutes, Article 6252-13a, §8(b), which provides the Office of the Secretary of State with the authority to promulgate rules to insure the effective administration of the Administrative Procedure and Texas Register Act.

**§91.58 Certification. Immediately following the text on the last page of all documents,** [On the last page of the document, immediately following the text,] the certification information shall be typed.

**(1) The certification for proposed rules shall include:**

**(A) A statement containing the wording "This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt."; and**

**(B) The information listed in paragraph (3) of this section.**

**(2) The certification for adopted rules shall include:**

**(A) A statement containing the wording "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."; and**

**(B) The information listed in paragraph (3) of this section.**

**(3) The certification for all documents shall include the city in which the document is signed, the date of signing, the signature of the certifying official, the typed name and title of the certifying official, and the typed name of the agency. A signature stamp or other facsimile may be used for certification in place of an original signature.**

Issued in Austin, Texas, November 16, 1981.

Doc. No. 818295      David A. Dean  
   Secretary of State

Proposed Date of Adoption: December 25, 1981  
For further information, please call (512) 475-7886.

**TITLE 19. EDUCATION**

**Part I. Coordinating Board, Texas College and University System**

**Chapter 5. Program Development**

**Subchapter K. Private Degree-Granting Institutions Operating in Texas**

The Coordinating Board, Texas College and University System proposes amendments to §§5.211, 5.212, 5.214-5.216, 5.219, 5.221, 5.222 concerning a prohibition against the establishment or operation of a branch campus of a private college or university in Texas without board approval. The amendments will also establish the maximum time limit for a certified institution to obtain accreditation from a recognized accrediting agency. The amendments also include provisions clarifying the board's definition of a recognized accrediting agency and define a branch campus and home campus of an institution. The amendments will adjust fees for reviewing initial and renewal applications for a certificate of authority and revise the administrative and judicial procedures for reviewing board decisions. All amendments are proposed to bring the board's rules into compliance with amendments to the statute enacted by the 67th Legislature.

Stanton C. Calvert, institutional certification director, has determined that for the first five-year period the rule will be in effect, there will be fiscal implications as a result of enforcing or administering the rule.

(A) Effect on state government:

	1982	1983	1984	1985	1986
Estimated additional cost	\$1,000	\$1,000	\$1,300	\$1,300	\$1,600
Estimated reduction in cost	0	0	0	0	0
Estimated increase in revenue	\$1,000	\$1,000	\$1,300	\$1,300	\$1,600

(B) There will be no effect on local government.

The director has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be uniformity in standards among private nonexempt institutions of higher education and branches of accredited private institutions; assurance that institutions subject to these rules will make progress toward accreditation while under state certification; authorization for the board to apply its standards to branch campuses that do not achieve separate and full accreditation from a recognized accrediting agency; adjustment of initial and renewal application fees to more nearly cover the actual cost of conducting reviews of applications for certificate of authority; and bringing the board's administrative and judicial review procedures under the Administrative Procedure and Texas Register Act.

(B) The possible costs to private institutions for board evaluation of branches will be \$1,600 in 1982 and 1983, \$1,900 in 1984 and 1985, and \$2,200 in 1986.

Comments on the proposal may be submitted to Kenneth H. Ashworth, commissioner of higher education, Coordinating

Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

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

James McWhorter  
November 16, 1981

The amendments are proposed under Education Code, Title 3, Subtitle B, Chapter 61.303-305(c), 61.308, 61.310 which provide the coordinating board with the authority to adopt rules and regulations concerning the establishment and operation of branch campuses by private institutions of higher education, recognize accrediting agencies for the purposes of the subchapter, establish maximum time limits for an institution, adjust fees to more nearly cover the actual cost of reviewing applications for a certificate of authority and revise the board's review procedures to conform to the Administrative Procedure and Texas Register Act.

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

**Accreditation standards acceptable to the board**—The standards of the recognized accrediting agencies [listed under §5.212(a)(1) of this title (relating to Exemptions)], or, for those institutions exempt under §5.212(a)(2) of this title (relating to Exemptions), the accrediting agency generally recognized by the appropriate professions.

**Branch campus, extension center, or other off-campus unit**—Any institution or part of an institution offering or proposing to offer away from the home campus more than two-thirds of the courses accepted for a degree to be awarded by that institution or another institution.

**Home campus**—The headquarters of an institution, such location to be determined upon consideration of information such as the following:

- (A) where the institution is chartered;
- (B) the site, campus, or city where the principal or chief executive's offices are located;
- (C) where the institution conducts the preponderance of its instructional activities; and
- (D) any other pertinent and material facts.

**Private institution of higher education or institution**—An education institution which:

- (A)-(B) (No change.)
- (C) furnishes or offers to furnish courses of instruction in person or by correspondence leading to a degree or **providing credits** [for which a majority of the credits given are] alleged to be applicable to a degree.

**Recognized accrediting agency**—A recognized accrediting agency is one whose approval of an institution or a branch campus in Texas will be recognized by the board under §5.212(a)(1) of this title (relating to Exemptions):

- (A) if its accreditation of the home campus of an institution is full and unconditional;
- (B) if, after a complete and separate on-site evaluation of each Texas branch campus, each branch campus has been awarded full, unconditional, and separate accreditation on its own merits. Any of the following agencies which meets the above conditions will be recognized by the board: [The] Southern Association of Colleges and Schools, Middle States Association of Colleges and Secondary Schools, New England Association of Schools and Col-

leges, North Central Association of Colleges and Schools, Northwest Association of Secondary and Higher Schools, *Western Association of Schools and Colleges*, the American Association of Bible Colleges, and the Association of Theological Schools of the United States and Canada.

**Sufficient full-time faculty**—For each program of study at least one full-time teaching faculty member whose field of preparation is appropriate to that program of study.

The subchapter—Subchapter G, Chapter 61, Title 3 of the Texas Education Code, *as amended*, having an effective date of June 21, 1975 [which subchapter was added by House Bill 1538 enacted by the 64th Texas Legislature].

#### §5.212. Exemptions.

(a) **Except as provided below** the provisions of this subchapter do not apply to:

(1) an institution which:

(A) is fully accredited by a recognized accrediting agency, [or] **except that no institution may establish or operate a branch campus, extension center, or other off-campus unit without board approval. This provision does not apply to:**

(i) **the home campus if it was fully accredited prior to January 1, 1981,**

(ii) **each branch or other unit that was fully and separately accredited as a free-standing institution or was a candidate for separate accreditation as a free-standing institution prior to January 1, 1981,**

(iii) **the home campus of an institution and each branch, center, and unit thereof when and if each obtains and maintains full and separate accreditation by a recognized accreditation agency.**

(B) (No change.)

(2) (No change.)

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

#### §5.214. Minimum Standards for Nonexempt Institutions.

(a) The board shall require each institution to provide an acceptable comprehensive statement of its educational objectives and to demonstrate its fitness to operate and maintain itself in accordance with the following minimum standards:

(1) (No change.)

(2) The education, [and] experience, and character of directors, administrators, supervisors, counselors, agents, and faculty are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study.

(3) There are a sufficient number of full-time faculty to insure:

(A) (No change.)

(B) adequate educational association between students and faculty; **and**

(C) (No change.)

(D) as a minimum, sufficient full-time faculty means for each program of study at least one full-time teaching faculty member whose field of preparation is appropriate to that program of study.]

(4)-(15) (No change.)

(b)(16) The bases of judgment for the application of subsection (a)(1)-(15) of this section [these standards] are generally accepted practices of accredited institutions of higher education in Texas and the United States as defined by institutional and specialized accrediting bodies and the

several academic professional societies which have established standards for their members (e.g., The National Association of College and University Business Officers, American Association of Collegiate Registrars and Admissions Officers, et.al.).

(c)(b) The board may accept as evidence of compliance with minimum standards established in this section the accreditation of selected accrediting agencies **if the commissioner or his designees have participated in and concur with the actions of the agency.** This shall not be construed as giving exempt status to an applicant institution so accredited if it has not already been exempted under §5.212(a)(1) of this title (relating to Exemptions); nor is it to be understood that the board should not require further evidence and make further investigations concerning whether the institution should be authorized to operate in Texas.

§5.215. **Prohibition Applicable to Nonexempt Institutions.** After the effective date of the subchapter, no person or institution may:

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

§5.216. **Authority of Nonexempt Institutions To Grant Degrees and Offer Courses.**

(a) **Eligibility to apply.**

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

(b) Application for certificate of authority.

(1) An institution [of higher education] may apply to the board for a certificate of authority to grant a degree in a specified program of study on application forms provided by the board.

(2) (No change.)

(c) (No change.)

(d) Authority to represent transferability of course credit. Any institution as defined in §5.211 of this title (relating to Definitions), whether or not it purports to offer degrees, may solicit students for or enroll them in courses on the basis that credits for such courses are applicable to a degree program of another institution, **subject to the restrictions of §5.212(a)(1)(A) of this title (relating to exemptions)**, provided that:

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

(e) (No change.)

(f) Renewal of certificate.

(1) **Certification by the State of Texas is not intended to take the place of accreditation; rather, it is intended only to safeguard the public interest and provide sufficient time for an institution to develop the strength to earn approval from a recognized accrediting agency.** [A private institution of higher education which desires to renew its certificate of authority shall apply to the board at least 60 days prior to the expiration of the current certificate.]

(2) **An institution may be granted not more than four successive certificates of authority. Absent sufficient cause, upon expiration of the fourth certificate, the institution must have been accredited by a recognized accrediting agency. The board shall consider the application of any accreditation standard that prohibited accreditation of the institution on the basis of religious policies practiced by the institution as a "prima facie" justification for extending the institution's eligibility for certification if all other requirements of the board are satisfied.**

(3)(2) The board shall renew the certificate if it



finds that the institution has maintained all requisite standards and has complied with the provisions of this subchapter, as appropriate.

**§5.219. Revocation of Certificates to Nonexempt Institutions and Agents.**

(a) The board may revoke an institution's certificate of authority to grant degrees at any time if it finds that:

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

(3) advertising or representations made [utilized] on behalf of and sanctioned by the institution is deceptive or misleading; or

(4) (No change.)

(b) (No change.)

**§5.221. Administrative Procedures for Nonexempt Institutions.**

(a) Initial certificate of authority.

(1) (No change.)

(2) Applications must be accompanied by a fee of **\$600** [\$250].

(3) A [An ad hoc] consultant certification committee of at least three members [appointed by the board] will be formed, as needed, to assist the commissioner in the study of individual applications for certificates of authority [in accordance with their respective areas of expertise].

(4) The commissioner, or his designated representative(s), and an *ad hoc* committee of independent consultants, [the consultant committee] will, if considered appropriate, visit the institution and conduct an on-site survey to develop further the information shown in the application. Travel and per diem expenses of this group incident to an on-site survey will be borne by the institution concerned.

(5) The consultant certification committee [to review applications, following its review, and if indicated, its on-site survey,] will, with the commissioner or his staff representative(s), analyze the findings and submit to the board a recommendation concerning whether the applicant institution should be awarded a certificate of authority.

(6) Upon approval of the board for award of the certificate of authority to an institution, the commissioner will act immediately to prepare and forward the certificate. It shall state as a minimum the fact that the institution is authorized to grant degrees[, as specified, in identified academic programs], describe [describing] the issue date, and the period for which the certificate is applicable.

(7) The provisional certificate described in §5.216(c)(4) of this title (relating to Authority of Nonexempt Institutions To Grant Degrees and Offer Courses) shall be issued within 30 days of receipt of application by the board.

(8) (No change.)

(b) Renewal.

(1) At least 60 days but no more than 120 days prior to the expiration of the current certificate of authority an institution will, if it desires to renew it, make application to the board on forms provided upon request. Reports not previously submitted to the board and related to the application for or renewal of accreditation to national or regional accrediting agencies will be included. Formal application for renewal by the board shall be accompanied by a [certificate] fee of **\$300**, or in the event of an on-site visit, **\$600** [\$150].

(2) A consultant certification committee, described in subsection (a)(3) of this section, with the commissioner or his designated representative, will prepare a recommendation to the board in the same manner[, making an on-site

visit, if appropriate,] as prescribed for *evaluation* [approval] of an initial application, including an on-site visit, if appropriate.

(c) Amendments to application for certificate of authority. When amendment to an existing program to award a new or different degree is sought pursuant to §5.216(e)(2) [(d)(2)] of this title (relating to Authority of Nonexempt Institutions To Grant Degrees and Offer Courses) within the period covered by an existing certificate, the institution should forward to the commissioner a detailed description of the proposed change. This shall include, minimally, an outline of the curriculum to be offered, the identification of the degree to be awarded, the qualifications of the faculty involved, anticipated enrollment, financial support expected and its source, and the relation of the new program to the purpose of the institution. The approval procedure will correspond to that outlined above for an initial application. Applications for amendment shall be accompanied by a fee of **\$150** [\$75 to cover the cost of program evaluation].

(d) Agents.

(1) An application for an agent's certificate of registration shall be submitted to the board in accordance with §5.215 of this title (relating to Prohibition Applicable to Nonexempt Institutions). The commissioner shall be authorized to take approval action on an agent's application therefor. [Action to disapprove an application shall be reserved to the board.]

(2) The application shall be accompanied by a fee of **\$50** [\$25].

(3) (No change.)

(e) (No change.)

(f) Administrative remedy.

[(1)] An institution [whose certificate of authority is revoked or] whose application for an original, amended, or renewal certificate of authority is *denied* [does not meet the standards of the board] is entitled to written notice of the reasons [assigned by the board] for the denial [or revocation.] and may request a hearing before the board. The hearing shall be held within 120 days after written request is received by the board, but not sooner than 30 days after receipt of notice from the aggrieved. It is similarly entitled to written notice of reasons for revocation or denial of an agent's initial application for a certificate of registration or for its renewal.

[(2)] Any person aggrieved by a decision of the board respecting denial or revocation of an authorization to operate, or of an agent's permit, shall have the right to a hearing and review of such decision by the board. If, upon written notification of any such action by the board, the aggrieved party desires a hearing, the party shall notify the board, in writing, within 15 days after receipt of notice of such action, else the action shall become final.

[(3)] The said hearing shall be held within 120 days after written request is made to the board, but not sooner than 30 days after receipt of notice by the aggrieved.

[(4)] The notice must include:

[(A)] a statement of time, place, and nature of the hearing;

[(B)] a statement of the legal authority and jurisdiction under which the hearing is to be held;

[(C)] a reference to the particular sections of the statutes and rules involved; and

[(D) a short and plain statement of the matters asserted.

[(5) If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

[(6) All nonevidentiary grounds for setting aside the board's action which may be raised prior to the hearing must be fairly raised, submitted to, and received by the board within 15 days after receipt of notice of hearing. Counsel for the board may respond in writing.

[(7) Postponement or continuance of hearing may be granted for good cause.

[(8) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

[(9) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

[(10) The record in a contested case includes:

[(A) all pleadings, motions, and intermediate rulings;

[(B) evidence received or considered;

[(C) a statement of matters officially noticed;

[(D) questions and offers of proof, objections, and rulings on them;

[(E) proposed findings and exceptions;

[(F) any decision, opinion, or report by the officer presiding at the hearing; and

[(G) all staff memoranda or data submitted to or considered by the hearing officer or members of the board who are involved in making the decision.

[(11) Proceedings, or any part of them, must be transcribed on written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties. The subchapter does not limit an agency to a stenographic record of proceedings.

[(12) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

[(13) Other details related to preliminaries to and procedures for the hearing shall be followed in accordance with §14-17 of the Administrative Procedure Act enrolled as Senate Bill 41, 64th Texas Legislature.

[(14) Within 10 days after the decision which emanates from the hearing, notice thereof shall be forwarded to the aggrieved.]

**§5.222. Judicial Procedures for Nonexempt Institutions.** *The board shall conduct hearings, and a decision of the board may be appealed, in accordance with the Administrative Procedure and Texas Register Act.*

[(a) If after the hearing described in §5.221 of this title (relating to Administrative Procedures for Nonexempt Institutions) the board upholds its previous denial or revocation of a certificate of authority or an agent's certificate of registration, the institution may challenge the board's action in a suit filed within 30 days of the notice of denial or revocation in the district court of Travis County. The trial shall be de novo as that term is used in appeals from a justice of the peace court to a county court. Appeals from any final judgment of the district court may be taken by any party in the

manner provided for in civil actions generally, but no appeal bond may be required of the board.

[(b) Judicial review shall, like those described in subsection (a) of this section, be consistent with and inclusive of §19 of the Administrative Procedures Act.]

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818311

James McWhorter  
Assistant Commissioner for  
Administration  
Coordinating Board, Texas College and  
University System

Proposed Date of Adoption: December 25, 1981

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

## TITLE 22. EXAMINING BOARDS

### Part X. State Board of Morticians

#### Chapter 203. Licensing and Enforcement— Specific Substantive Rules

The State Board of Morticians proposes amendments to §203.15 (387.02.00.016) concerning clarification of first call definition.

John W. Shocklee, executive secretary, has determined that for the first five-year period the rule will be in effect, there will be no fiscal implications on state or local governments as a result of enforcing or administering the rule.

Mr. Shocklee has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be preventing unlicensed persons from making first calls and insuring that the public is served by professional licensed personnel.

(B) There will be no possible economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John W. Shocklee, executive secretary, 1513 IH 35 South, Austin, Texas 78741.

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

John W. Shocklee  
November 16, 1981

The amendments are proposed under Texas Civil Statutes, Article 4582b, §5, which provides the State Board of Morticians with the authority to promulgate rules and regulations.

**§203.15 (387.02.00.016). Clarification of First Call Definition.**

(a) (No change.)

(b) *The term "first call" shall mean the beginning of the relationship and duty of the funeral director to take charge of a dead human body and have same prepared by embalming, cremation, or otherwise for burial or disposition, provided all laws pertaining to public health in this state are complied with. The term "relationship" shall mean the first meeting of a funeral director and person(s) responsible for making arrangements for the burial or disposition of the dead human body, or the first contact with the dead human body by a funeral director as instructed by the person(s) responsible for the funeral arrangements. "First call" does not include calls made by ambulance, when the person dispatching the ambulance does not know whether a dead human body is to be picked up. A dead human body shall be picked up on first call only under the direction and personal supervision of a licensed funeral director or embalmer in attendance. After the first call has been established, a dead human body may be transferred from one funeral home to another funeral home or a commercial embalming establishment and to and from a morgue where an autopsy is to be performed without a licensed funeral director personally making the transfer. [The pickup of a dead human body at a morgue constitutes a first call if that is the beginning of the relationship and duty of the funeral director to take charge of that dead human body for preparation for burial or other lawful disposition.]*

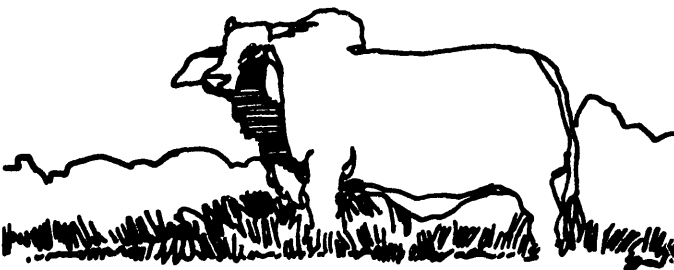
(c) *When making a "first call" the licensed funeral director or embalmer must personally sign the release form with his usual signature, current funeral director or embalmer license number, and/or present said license upon request of releasing institution. [The transfer of a dead human body from a funeral home to and from a morgue is not a first call if the relationship in subsection (b) of this section between the funeral director and the dead human body has already been established.]*

(d) *Commercial embalming establishment licensees are prohibited from authorizing "first calls" or dealing directly with the public for services or merchandise; such "first calls" must be authorized by a licensed funeral establishment as defined by this Act prior to such removal. Any such removal(s) must bear the name of the funeral establishment authorizing the removal on the release form.*

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818290      John W. Shocklee  
Executive Secretary  
State Board of Morticians

Proposed Date of Adoption: December 25, 1981  
For further information, please call (512) 442-6721.



## TITLE 25. HEALTH SERVICES

### Part V. Texas Health Facilities Commission

#### Chapter 515. Commission Review of Applications

##### Subchapter D. Evidence

The Texas Health Facilities Commission proposes new §515.119 entitled Nonparty Witness and Mileage Fees. The purpose of the proposed section is to establish a commission policy regarding what reimbursement of expenses a nonparty witness or deponent is entitled to when such person is subpoenaed or otherwise compelled to attend a commission hearing or proceeding, and/or to produce certain material deemed necessary and proper for the purposes of the hearing or proceeding. The commission does not view the base amounts authorized in Texas Civil Statutes, Article 6252-13a, §14(1), sufficient to reimburse such persons. Before greater amounts can be authorized, however, the commission must express its policy through the adoption of a rule in accordance with Texas Civil Statutes, Article 6252-13a, §14(1). The effect of an adoption of this proposal would be to provide for reasonable reimbursement of expenses of nonparty subpoenaed witnesses or deponents.

C. Thomas Camp, deputy administrator, has determined that for the first five-year period the rule will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Camp has also determined that for each year of the first five years the rule as proposed is in effect:

(A) The public benefits anticipated as a result of enforcing the rule as proposed will be reasonable reimbursement of expenses of nonparty subpoenaed witnesses or deponents.

(B) The possible economic cost to individuals who are required to comply with the rule as proposed will be an average cost per nonparty subpoenaed witness or deponent of \$125 each year for 1982, 1983, 1984, 1985, and 1986.

Comments on the proposal may be submitted to John R. Neel, general counsel, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761, through December 18, 1981.

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

John R. Neel  
November 16, 1981

The new section is proposed under Texas Civil Statutes, Article 4418h, which provides the Texas Health Facilities Commission with the authority to adopt rules determined necessary for the administration and enforcement of the Texas Health Planning and Development Act.

##### §515.119. Nonparty Witness and Mileage Fees.

(a) A witness or deponent who is not a party (or an employee, agent, or representative of a party) and who is subpoenaed or otherwise compelled to attend a commission hearing, to attend a proceeding to give a deposition, or to produce books, records, papers, accounts, documents, or other objects

that may be necessary and proper for the purposes of the hearing or proceeding is entitled to receive:

(1) Transportation costs as follows:

(A) mileage of \$ .20 per mile for going to and returning from the place of the hearing or the place where the deposition is taken if the place is more than 25 miles one-way from the person's city of residence; or

(B) the actual cost of air (lowest available fare but not to exceed coach fare) and ground transportation for going to and returning from the place of the hearing or the place where the deposition is taken; and

(2) Other costs as follows: a fee of \$10 per day, plus any actual out-of-pocket expenses incurred in attending the hearing or the proceeding, (e.g. lodging, meals, parking fees, or taxi fares) but not to exceed \$75 per day.

(b) To secure payment of the fees identified in subsection (a) of this section, the person requesting the attendance of the witness or deponent must, when filing a motion for the issuance of a subpoena or a commission to take a deposition, deposit with the commission the funds estimated to accrue pursuant to subsection (a) of this section.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818297 Betty Himmelblau  
Vice-Chairwoman  
Texas Health Facilities Commission

Proposed Date of Adoption: January 8, 1982  
For further information, please call (512) 475-6940.

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## NONCODIFIED

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### Texas Department of Human Resources

#### Nursing Facility Administration

##### General Policies 326.33.12

The Texas Department of Human Resources proposes the new Rules 326.33.12.016-.019 concerning registration of information by retirement homes. These rules were adopted on an emergency basis, effective September 4, 1981, in accordance with House Bill 1812, which was signed by Governor William Clements on June 16, 1981. The department is named in the law as the state agency with responsibility to register facilities, to gather the required information, and to disclose that information to the public upon request. The following rules include the policies and procedures for complying with House Bill 1812.

David Hawes, director of programs budget and rate setting, has determined that for the first five-year period the rules will be in effect, there will not be fiscal implications on state or local governments as a result of enforcing or administering the rule.

Mr. Hawes has also determined that for each year of the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rules will be

allowing a consumer to make an informed decision about a retirement facility. There are no economic costs to individuals required to comply with these rules as proposed.

Written comments are invited and may be sent to Susan L. Johnson, administrator, Policy Development Support Division—236, Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this Register.

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

J. B. McReynolds  
November 17, 1981

These new rules are proposed under the authority of the Human Resources Code, Chapter 22, which authorizes the department to administer public assistance programs, and Texas Civil Statutes, Article 695r, §6, which authorizes the department to establish rules for registering retirement facilities.

##### .016. Retirement Home.

(a) A person may not offer to sell or sell a life interest or long-term lease in Texas unless the facility files with the Department of Human Resources a disclosure statement that sets forth:

(1) The name and address of the facility and the name and address of the individual owner or of affiliated parent or subsidiary corporation or partnership.

(2) Information concerning incorporation as follows:  
(A) certificate of incorporation (Texas corporations only);

(B) articles of incorporation;

(C) certificate of authority to do business in Texas (for non-Texas corporations only);

(D) a copy of any management contracts;

(E) the names, addresses, and titles of the officers and directors of the corporation;

(F) the names and addresses of individuals and organizations having an ownership of 5.0% or more in the disclosing facility.

(3) A statement of whether the facility or an affiliate, parent, or subsidiary is a religious, nonprofit, or proprietary organization.

(4) A brief resume of the manager/administrator.

(5) A statement of whether any of the persons named in paragraphs (1) and (2) of this subsection:

(A) have been convicted of a felony or pleaded nolo contendere to a felony charge, or been held liable or enjoined in a civil action by final judgment if the felony or civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(B) is subject to a currently effective injunctive or restrictive order or federal or state administrative order relating to business activity or health care as a result of an action brought by a public agency or department, including, without limitation, actions affecting a license to operate a foster care facility, nursing home, retirement home, or home for the aged.

(6) Financial information of the facility, and financial information of a parent or subsidiary corporation or partnership affiliated with more than two facilities anywhere in the United States, updated at least semiannually including:

- (A) a summary balance sheet for each entity;
- (B) a narrative explaining material facts related to the balance sheet;
- (C) a statement of use of proceeds;
- (D) a pro forma balance sheet for each entity;
- (E) a CPA audit, if any, may be submitted in lieu of subparagraphs (A)-(D) of this paragraph.

(7) A feasibility study unless waived by the department. The department may waive the requirement for a feasibility study for any corporation, facility, or entity that has been in business in Texas for two years prior to the date of registration.

(8) The level of participation in Medicare and/or Medicaid programs by the facility and parent affiliate.

(9) A statement of all fees required by members, including the entrance fee, the monthly service charge, the proposed application of the proceeds of the entrance fee by the facility, and the plans by which the entrance fee and the monthly service charges are determined, if those fees and charges are not the same in all cases.

(10) A statement of policy as to changes or increases in fees.

(11) The location and description of physical property or properties essential for the proposed to be used or being used in connection with the facility's agreements to furnish care.

(12) A statement describing the services provided and the extent to which medical care is furnished.

(13) A statement describing the health and financial conditions required for a person to continue as a member.

(14) A statement setting forth the conditions on which the facility may relet a member's room.

(15) A statement of the terms under which a life interest or long-term lease may be canceled by the member or the facility during the first six months of residence, and the basis for establishing the amount of refund of the entrance fee.

(16) A statement of the terms under which a life interest or long-term lease may be canceled by the member or the facility after the first six months of residence, and the basis for establishment of the amount of refund of the entrance fee.

(17) A statement describing the circumstances under which a member will be permitted to remain in the facility in the event of possible financial difficulties of the member.

(18) A statement of the policies of the facility relative to marriage of a member while residing at the facility, including:

- (A) the fees that will be charged;
- (B) the entry of the spouse into the facility;
- (C) the consequences if the spouse doesn't meet entry requirements.

(19) A statement of the terms under which a life interest or long-term lease is canceled by death of a member, both before and during occupancy, and the basis for establishing the amount of refund, if any, of the entrance fee.

(20) Other material information that the Department of Human Resources may require.

(21) Other material information that the facility or person may wish to include.

(22) A copy of the lease or membership agreement proposed to be used and all amendments to that agreement.

(23) A statement in bold type of not less than 12

point, that registration does not constitute approval, recommendation, or endorsement by the Department of Human Resources, nor does it mean that the facility meets any specified standards relative to the care provided, nor does it mean that the information provided in the disclosure has been audited and verified by the Department of Human Resources.

(b) The statement required by this law must be signed and verified by the chief executive officer of the facility.

*.017. Amendments, Revised Statements, and Financial Information.*

(a) A facility must notify the Department of Human Resources promptly, in writing, of any material change in the information as originally submitted or amended. Such notification must be submitted within 30 days following the date when the material change occurred. A material change includes any change that would constitute changing, adding to, or deleting any of the information required in the disclosure statement.

(b) A facility must file with the Department of Human Resources semiannual financial statements as specified in Rule 326.33.12.016 and other financial information that may be determined by the department.

*.018. Furnishing Statement to Individual.* On receiving a request from an individual, the Department of Human Resources or a facility must furnish to the individual a copy of the disclosure statement that the facility most recently filed with the department, including required amendments.

*.019. Administrative Procedures.*

(a) It must be the responsibility of the person, i.e., the facility and/or parent affiliates and/or corporations, to determine whether the registration requirements of House Bill 1812 apply to a particular facility and/or entity, and to take the steps necessary to accomplish registration and disclosure.

(b) It must also be the responsibility of the person, i.e., the facility, and/or parent affiliates and/or corporations, to determine whether the policies of the entity relative to sales and offers to sell comply with House Bill 1812.

(c) Failure to assume these responsibilities places a person at risk relative to violation of House Bill 1812.

(d) The Department of Human Resources will send an acknowledgement of receipt of materials to each facility submitting registration information.

(e) A registration file of information submitted by facilities will be maintained by the Provider Services Division of the Department of Human Resources and the information will be shared with citizens upon request.

(f) In the event that an unregistered facility or entity comes to the attention of the department through an inquiry of a citizen or some other means, the person will be contacted and will be informed as to the requirements of House Bill 1812 and the department's rules. The person will be requested to register or to submit facts which indicate that the facility or entity does not fall under the requirements of the law. Such material information must be submitted to the department within 30 days following notification by the department.

(g) If a facility is found not to be in compliance with this law, the material facts relative to the noncompliance will be submitted to the local prosecuting attorney in the county in which the facility is located.

(h) Semiannual updates of financial information must

be due 180 days following the date of original registration and at the end of each succeeding 180 days.

(i) Disclosure statements and financial information must be mailed to the following address: Texas Department of Human Resources, Provider Services Division (544-A), Institutional Care Services Branch, P.O. Box 2960, Austin, Texas 78769.

(j) Records of registration will be maintained for five years after closure of a facility.

Issued in Austin, Texas, on November 17, 1981.

Doc. No. 818318      Marlin W. Johnston  
                                 Commissioner  
                                 Texas Department of Human Resources

Proposed Date of Adoption: December 25, 1981  
For further information, please call (512) 441-3355, ext. 2037.

# COMMUNICATIONS



Pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, an agency may take final action on a rule 30 days after publication of the proposed action in the *Register*. Upon adoption of the action, "the agency, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption." The action is effective 20 days after filing of the notice of final action with the Texas Register Division unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice. The notice includes whether the action is promulgated with or without changes to the action proposed; a statement of the legal authority under which the final action is promulgated; and the text of the final action, in compliance with the rules of the Texas Register Division. If an agency takes final action on a rule with no changes made to the text as proposed, only the preamble of the notice and statement of legal authority will be published. The text, as appropriate, will be published only if final action is taken with changes made to the proposed action. The certification information, which includes the effective date of the final action, follows each published submission of final action. A telephone number for further information is also published.

An agency may withdraw proposed action or the remaining effectiveness of emergency action by filing a notice of withdrawal with the Texas Register Division. The notice will appear in this section of the *Register* and is generally effective immediately upon filing with the Texas Register Division.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 7. Pesticides

The Texas Department of Agriculture adopts the repeal of §§7.1-7.29 without changes to the proposed notice of repeal published in the October 9, 1981, issue of the *Texas Register* (6 TexReg 3747). The department simultaneously adopts new §§7.1-7.21 with changes to the proposed text which was also published in the October 9, 1981, issue of the *Texas Register* (6 TexReg 3747).

The repeal of the department's current pesticide regulations and adoption of new sections are justified by recent amendments to the Texas Pesticide Control Act, Texas Agriculture Code, Chapter 76 (1981), made by Senate Bill 1276, 67th Legislature (1981), which have substantially altered the law regarding pesticide control. This legislation has, among

other things, substantially reorganized the responsibilities of the Texas Department of Agriculture, the Texas Animal Health Commission, and the Texas Department of Water Resources concerning certification of pesticide applicators; altered the requirements for issuance of commercial and non-commercial pesticide applicator licenses to out-of-state applicants; and revamped the license renewal requirements. The repeal of the old sections and the adoption of the new sections reflect the need to comply with these legislative changes.

The repeal was also necessitated by the abrogation of the Texas Pesticide Advisory Committee pursuant to the provisions of the Texas Sunset Act. The committee was provided for in §7.5 of the rules herein repealed. Further, rewriting the department's pesticide rules was necessary to bring these regulations more within the definition of a rule as specified in the Administrative Procedure and Texas Register Act. The rules have been rewritten to comply with those requirements and standards.

The department received written and oral comments regarding the repeal of §§7.1-7.29. In principle, all those submitting comments favored the repeal. However, several of those commenting expressed concern about the following items. (The department's reasons for disagreeing with each comment are also reflected.)

(1) The repeal of the provisions in former §7.6(b)(6) allowing pesticide registrants to designate the secretary of state as their resident agent for service of process. This provision was repealed to require registrants to appoint a resident citizen as their agent for service of process of papers dealing with the administration, enforcement of the Texas Pesticide Control Act, and applicable regulations.

(2) The repeal of former §7.3 dealing with misbranded pesticides. This provision was repealed to avoid redundancy between the Texas Pesticide Control Act and departmental regulations. The substance of this section is adequately provided for in §76.023 of the Act.

(3) The repeal of former §7.6(b)(4) requiring persons wishing to register a pesticide to submit a list of dealers who will be distributing the product in places where samples of the product may be obtained. The language of this section was incorporated in the provisions of new §7.4(a).

(4) The repeal of the provisions in former §7.13(2) and (3). These provisions were repealed to avoid redundancy between the Texas Pesticide Control Act and departmental regulations. The substance of these provisions are adequately provided for in §§76.151-76.153 of the Act.

(5) The repeal of the provisions of former §7.17(a)(1)(c) requiring the commissioner to approve pesticide applicator training programs advertised as "approved" or "accepted." New §7.10 amply provides for consumer protection in the pesticide training program area.

(6) The repeal of the provisions of former §7.20(b), which required the department to develop a separate test for each category for which a pesticide applicator was to be certified. The department will continue to require such separate testing under the new sections.

(7) The repeal of the provisions of former §7.29(b), which required pesticides to be stored in a manner that reasonable insured that human foods, domestic and public water, pet foods, drugs, animal feeds, commercial fertilizers, seeds, and clothing would not be contaminated. The Texas Pesticide Control Act, §76.201 and new §7.21 adequately provide for the proper storage and disposal of pesticides.

The following parties filed comments in favor of the repeal: Texas Farmworkers Union, Sierra Club, Texas Rural Legal Aid, Texas Association of Aerial Applicators, Texas Agricultural Chemical Association, Josephine Castillo, Charlene Sefcik, and Lou Holden.

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.

Steve Haley  
November 16, 1981

The repeal is adopted under Agriculture Code, Title 5, Subtitle B, Chapter 76, as amended by Senate Bill 1276, 67th Legislature, which provides the Texas Department of Agriculture with the authority to promulgate rules and regulations not inconsistent with the Act as may be necessary to carry out the various activities set out within the Act itself as respects the regulation of pesticides.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818286      Reagan V. Brown  
                                 Commissioner  
                                 Texas Department of Agriculture

Effective Date: December 7, 1981

Proposal Publication Date: October 9, 1981

For further information, please call (512) 475-6346.

Section 7.4(a) has been amended in response to comments received from the Texas Farmworkers Union, National Audubon Society, Texas Aerial Applicators Association, and Texas Agricultural Chemical Association. The section no longer requires an applicant for registration of a pesticide to submit to the department a list of all dealers who will be distributing the product and a location where samples of the product may be obtained. Instead, an applicant will be required to submit only a partial list of such dealers where samples of the product may be obtained.

Section 7.7 has been amended in response to comments received from the Texas Farmworkers Union and National Audubon Society. The section now requires holders of permits for experimental-use pesticides to submit the results of their experiments to the department.

Section 7.20(a) has been amended in response to comments received from the Texas Farmworkers Union, National Audubon Society, and the Sierra Club. The persons who may file a pesticide abuse complaint with the department now include any person with cause to believe that any provision of the Texas Pesticide Control Act or applicable regulations has been violated, and any person experiencing adverse effects from a pesticide application.

Section 7.20(b) has been amended in response to comments received from the Texas Farmworkers Union, National Audubon Society, and Sierra Club. The "if possible" language of this subsection has been deleted.

Other changes reflect public input voiced at a public hearing on the proposed sections held at the department offices on October 28, 1981. Rewriting the regulations affecting the Texas Pesticide Control Act should provide for more effective enforcement and improved administrative procedures.

The adopted rules will augment the provisions of the Texas Pesticide Control Act presently set out in the Texas Agriculture Code, Chapter 76, as amended, and will affect all areas of the law including: additional definitions, label requirements, registration of pesticides, custom mixes, special local needs, experimental use permits, pesticide dealers, enforcement powers, pesticide use, and application training programs, applicator certification, classification of commercial and noncommercial licenses, commercial applicator licenses, noncommercial applicator proof of financial responsibility, noncommercial applicator licenses, certified private applicator licenses, expiration and renewal of licenses, maintenance of records, registration and inspection of equipment, complaint investigation, storage and disposal of pesticides, and use inconsistent with label directions. The department received written and oral comments regarding adoption of the new sections. The comments concerned the following items. (The department's response to each comment is also included.)

**Making provision in the sections for the registration of custom-mix pesticides.** This proposal was rejected as unnecessary because the active components of custom-mix pesticides are required to be registered under the sections as currently constituted.

**Amending §7.3 to prohibit "unclassified pesticides."** This proposal was rejected because the Texas Department of Agriculture regulates only those pesticides regulated by the Environmental Protection Agency (EPA). The agency will not, through this chapter, attempt to broaden the number of regulated chemicals. Therefore, pesticides not regulated by federal regulation will be termed "unclassified" for purposes of these regulations.

**Amending §7.3(4) to require that directions for the use of a pesticide, specified on the label, be sufficient such that, if complied with, they would be adequate for the protection of health and the environment.** This proposal was rejected because such requirement is already imposed by §76.021 of the Texas Pesticide Control Act.

**An alleged contradiction between §7.3(5)(A) and §7.3(5)(H).** The department feels these provisions are not inconsistent. Section 7.3, as presently constituted, provides that if the weight of a pesticide container is stated as an average content, then the average content of such containers shall not be below the stated average. However, if the weight of a pesticide container is stated as a minimum quantity, the weight of such container shall not be below such quantity.

**Amending §7.3 to require that pesticide labels inform readers of the above physiological tests.** This proposal was rejected because pesticide labeling already is required to have some medical instructions by federal regulations.

**The alleged illegality of selling custom-mix pesticides.** The active components of custom-mix pesticides are authorized by federal regulation.

**Requiring pesticide labels to be in English and Spanish.** This proposal was rejected as being the province of federal regulation.

**Attaching special local-need labels to pesticide containers where so required by federal regulation.** This



proposal was rejected as being fully encompassed by federal regulation.

Amending §7.4 to require that an applicant wishing to register a pesticide be required to submit a list of dealers where samples of the product may be obtained. This proposal was incorporated into the rule as adopted.

Amending §7.4 to provide specific criteria for the registration of a pesticide under §76.04 of the Texas Pesticide Control Act. This proposal was rejected. In the determination of the department, the criteria provided by the Texas Pesticide Control Act and §7.4 as presently constituted are sufficient.

Amending §7.6 to require that before the commissioner approves the registration of a pesticide under §76.046 of the Texas Pesticide Control Act, he determine that a "special local need" exists rather than a "local need." This proposal was rejected as making no semantic difference.

Amending §7.6 to specify criteria to be used to determine if a special local need exists. This proposal was rejected as being encompassed by federal regulation.

Amending §7.6 to include the specific requirements for issuing special local-need labels found in 40 Code of Federal Regulations, §§162.150 et. seq. This proposal was rejected as being encompassed by federal regulation.

Amending §7.6 to require a public hearing before issuing an experimental-use permit. This proposal was rejected as impractical and unnecessary. Only qualified and competent departmental personnel will review experimental-use applications.

Amending §7.7 to require holders of permits for experimental-use pesticides to report the results of their experiments to the department. This proposal was incorporated into the rule as adopted.

Amending §7.7 to require warning signs in fields where pesticides are being used experimentally. This proposal was rejected because pesticide experimentation is normally done in small plots under controlled conditions unlikely to present danger to the public.

Amending §7.8 to state not that it is a violation of the rules to distribute a restricted-use pesticide after the expiration date of a pesticide dealers license, but that restricted-use pesticides shall not be distributed after the expiration of such license. This proposal was rejected as making no semantic difference.

Amending §7.8 to require a person purchasing a restricted-use pesticide to show his license before making such a purchase. This proposal was rejected as being already encompassed by §7.8.

Amending §7.8 to require the agent of a licensee making a purchase of a restricted-use pesticide to show his principal's license and a written authorization from such principal before making such purchase. This proposal was rejected because past practice has shown that the unauthorized purchase of pesticides by agents of licensees has not been an enforcement problem. Pesticides are generally purchased from a local dealer familiar with local applicators and their employees.

Amending §7.8 to increase licensing fees. This proposal

was rejected because a fee increase is not justified at this time.

Amending §7.9 to provide for stop sale and sampling authority by the department. This proposal was rejected as being fully encompassed by §§76.151-76.153 of the Texas Pesticide Control Act.

Amending §7.10 to provide that a pesticide use or application training program must be approved by the commissioner if it claims to be "approved" or "accepted" in any advertising relating to such training program. This proposal was rejected as being fully encompassed within §7.10.

Amending §7.11 to require that a public health, pest control license be required for any pesticide application done on school grounds. This proposal was rejected as impractical.

Amending §7.12 to require separate testing for each category of pesticide use for which an applicant is licensed. This proposal was rejected as being fully implemented in the section as presently constituted.

Amending §7.13 to delete the provision allowing a person to be licensed as a commercial applicator if supervising an employee who is licensed as a certified applicator. This proposal was rejected as being in conflict with the Texas Pesticide Control Act.

Amending §7.14 to increase the amount of bond or liability insurance required of commercial applicators. This proposal was rejected because, in the determination of the department, the amount of such bond or liability insurance is sufficient.

Amending §7.15 to clarify that governmental employees who apply pesticides outside their government employment must first obtain an appropriate license. This proposal was rejected as being already encompassed in §7.15.

Amending §7.16 to require the licensing of private applicators. This proposal was rejected because private applicators are required to be licensed by the rules as presently constituted.

Amending §7.16 to require licensing instruction for private applicators in Spanish. Such instruction is already used by the department, and has been since the advent of the private applicators program.

Requiring mandatory training programs for private applicators. This proposal was rejected because such training programs are required presently.

Amending §7.17 to require yearly testing of applicators. This proposal was rejected as impractical. The commissioner has authority under the Texas Pesticide Control Act to order such training as necessitated by periodic changes in technology.

Amending §7.18 to require all applicators to submit their records of pesticide use to the department. This proposal was rejected as impractical. The department has no real need to require the submission of all such records. When records are needed, the department has the authority to inspect them or require an applicator to submit copies. The cost of maintaining such records would also be burdensome in relation to the benefits to be realized by the department.

Amending §7.18 to require the department to compile pesticide use statistics from the above records. This proposal was rejected as impractical.

Amending §7.18 to require pesticide applicators to record and provide in any records required under the Texas Pesticide Control Act, the distance of application from any water source. This proposal was rejected as unnecessary for proper enforcement of the Texas Pesticide Control Act.

Amending §7.18 to require pesticide applicators to record and provide in any records required under the Texas Pesticide Control Act the pest count of the area sprayed, both before and after application. This proposal was rejected as impractical.

Amending §7.19 to require pesticide application aircraft to have "N" numbers at least 12 inches tall. This proposal was rejected as being the province of federal regulation.

Amending §7.20 to allow any person alleging a violation of any provision of federal or state statutes or regulations to file a pesticide abuse complaint with the department. The proposal was adopted in part by amendments made to §7.20.

Amending §7.20 to drop the "if possible" language of subsection (b). This proposal was incorporated into the rule as adopted.

Amending §7.20 to require the department to issue a preliminary report to the complaining party on every complaint received. This proposal was rejected as unnecessary to the proper enforcement of the Texas Pesticide Control Act. Every complainant may receive a copy of the department's final report upon request.

Amending §7.20 to require the department to instigate an investigation of a pesticide complaint within 24 hours, when a complaint involves organo-phosphates or carbamates, and within 30 days on other pesticide complaints. This proposal was rejected because past practice reveals departmental response to be prompt on pesticide complaints. The department is hesitant to be bound to a specific response time in light of future uncertainties in manpower and budgeting. In view of these problems, this proposal was found to be impractical.

Amending §7.20 to allow the department to investigate all pesticide complaints irrespective of whether the perpetrator is an applicator, a grower, a distributor, a manufacturer, or some other party. This proposal was rejected as being fully encompassed by §7.20 as presently constituted.

Amending §7.20 to require the department to investigate complaints against licensees of other agencies. This proposal was rejected. The department currently investigates complaints of pesticide abuse, no matter which agency has licensed the applicator. For other matters made the subject of a complaint, the department will defer to the expertise of the licensing agency.

Amending §7.20 to clarify the procedures and circumstances under which an applicator's license may be suspended or revoked. This proposal was rejected as being fully encompassed by §76.116 of the Texas Pesticide Control Act.

Amending §7.20 to specify the procedures for hearings held under authority of the Texas Pesticide Control Act. This proposal was rejected as being fully encompassed by the Administrative Procedure and Texas Register Act.

Amending §7.20 to require the department to inform pesticide complainants of physiological tests available to determine the seriousness of exposure. This proposal was rejected. In the determination of the department, the public health is adequately protected by the sections as presently constituted.

Amending the rules to establish standards, which, if followed, would protect workers and the general public from exposure. In the determination of the department, the sections as presently constituted are adequate to effect such a task.

Amending §7.21 to provide that pesticides shall be stored in a manner which will reasonably insure that human foods, domestic and public water, pet foods, drugs, animal feeds, commercial fertilizer, seed, and clothing will not be contaminated. This proposal was rejected as being fully encompassed within §76.201 of the Texas Pesticide Control Act.

Amending §7.21 to delete subsection (e). This proposal was rejected as subsection (e) represents an essential part of the section.

Amending §7.21 to include more detailed guidelines on the storage and disposal of pesticides. This proposal was rejected as being impractical given the extensive number and variety of pesticides to be regulated. Disposal instructions are currently included on the labeling of pesticides as required by federal regulation and the Texas Pesticide Control Act.

Amending §7.22 to eliminate exceptions to subsection (a)(1) of the section. This proposal was rejected because the exceptions included are consistent with federal regulations.

Amending the rules to prevent pesticide applicators from operating in a careless and faulty manner. In the determination of the department, the sections as presently constituted, adequately protect the public from pesticide applicators who operate in a faulty or careless manner.

Posting warning signs in fields recently sprayed with pesticides. This proposal was rejected as impractical. In the determination of the department, state and federal regulations adequately protect farmworkers.

Making provision in the sections for a system of referring pesticide complaints to other regulatory agencies. This proposal was rejected. Provision is made in the department's primacy agreement with the EPA for such referrals.

Increased testing for pesticide applicators, both upon initial licensure and yearly renewal. This proposal was rejected. In the determination of the department, the testing of applicators at present is adequate.

Adopting rules providing for buffer zones between each area to be treated and any water sources and buildings. This proposal was rejected as impractical, given the varied standards that would be required for every possible climatological condition and density of population.

Adopting regulations which consider "special local risks" before authorizing pesticide applications. This proposal was rejected, as sufficient warnings relating to local risks are currently found on pesticide labeling.

The prohibition of canceled or suspended pesticides. This proposal is adequately addressed by state and federal regulations as presently constituted.

Adopting regulations which require a showing of financial responsibility by all pesticide applicators. This proposal was rejected as being contrary to the Texas Pesticide Control Act.

Adopting regulations relating to special certification of applicators which work in areas occupied by children. This proposal was rejected. In the determination of the department, the safeguards contained in the Texas Pesticide Control Act and sections as presently constituted are adequate to protect the health and safety of children.

Adopting regulations requiring pesticide labels to give container disposal instructions. Such instructions are currently required by both state and federal regulations.

Parties making comments in favor of the new sections were Texas Association of Aerial Applicators and Texas Agricultural Chemical Association. The following parties made comments against the rules: Texas Farmworkers Union, Sierra Club, National Audubon Society, Texas Rural Legal Aid, Josephine Castillo, Charlene Sefcik, and Lou Holden.

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.

Steve Haley  
November 16, 1981

These sections are adopted under Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture with the authority to adopt rules for carrying out the provisions of Texas Agriculture Code, Chapter 76, which includes rules providing for the collection, examination, and reporting of records, devices, and samples of pesticides; the safe handling, transportation, storage, display, distribution, or disposal of pesticides and pesticide containers; and labeling requirements of pesticides and devices.

**§7.1. Definitions.** In addition to the definitions set out in the Texas Agriculture Code, Chapter 76, §76.001 (1981), the following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

**Act**—Texas Pesticide Control Act, codified at Texas Agriculture Code, Chapter 76 (1981).

**Commissioner**—Commissioner of agriculture, Texas Department of Agriculture.

**Custom mix**—A pesticide formulation produced on special request for a specific customer.

**EPA**—Environmental Protection Agency.

**FAA**—Federal Aviation Administration.

**§7.2. Resident Agents.**

(a) Any person designated by an out-of-state applicant as a resident agent for service of process in this state pursuant to Subchapters C, D, or E of the Act shall:

(1) be a citizen of this state; and

(2) maintain a permanent address within this state where documents dealing with the administration and enforcement of this law may be served.

(b) The registrant shall notify the commissioner in writing within 10 days of any change of his resident agent. Failure to give such notice shall be grounds for suspending the registration of the registrant's pesticides.

**§7.3. Label Requirements.** In addition to the labeling requirements contained in Subchapter B of the Act, every pesticide distributed within this state must be prominently labeled with the following information.

(1) The address of the manufacturer, registrant, or distributor of the product.

(2) The use classification for which it is registered, stated as:

(A) restricted-use,

(B) general use, or

(C) unclassified for which no statement is required.

(3) An ingredient statement giving:

(A) the accepted common name and/or chemical name of all active ingredients;

(B) the percentage by weight of each active ingredient and the percentage by weight of inert ingredients;

(C) a trademark or trade name may not be used as the name of an ingredient unless it has become the common name;

(D) the sliding scale method of expressing percentages shall not be used (example: active ingredient name—6.0% to 8.0%).

(4) Complete directions for all uses of the pesticide shown on the label or labeling that are necessary for effecting the purpose for which the product is intended, including but not limited to:

(A) application rates of product to be applied and examples of how to dilute the material to the proper concentration; provided however, that if the application rate is expressed as weight of active ingredient per unit area (example: one pound per acre), a statement of the weight of active ingredient per unit volume of pesticide formulation shall also appear on the label or labeling (example: four pounds per gallon);

(B) proper mixing procedures;

(C) the methods of application;

(D) the limitations of application;

(E) re-entry requirements and preharvest intervals consistent with federal regulations; and

(F) clean-up, storage, and disposal instructions.

(5) The net weight or measure of contents, exclusive of wrappers, or other materials:

(A) the new weight or measure of contents shall be the average contents unless explicitly stated as a minimum quantity;

(B) if the pesticide is a liquid, the net content statement shall be in terms of liquid measure at 68°F (20°C) and shall be expressed in conventional American units of fluid ounces, pints, quarts, and gallons;

(C) if the pesticide is a solid or semisolid, viscous or pressurized, or is a mixture of liquid and solid, the net content statement shall be in terms of weight expressed as avoirdupois pounds and ounces;

(D) in all cases, net content shall be stated in

terms of the largest suitable units (example: "one pound, 10 ounces," not "26 ounces");

(E) in addition to the required units, specific net content may be expressed in metric units;

(F) variation above minimum content or around an average is permissible only to the extent that it represents deviation unavoidable in good and workmanlike manufacturing practice.

(G) variation below a stated minimum is not permitted;

(H) in no case shall the average content fall below the stated average content.

(6) Appropriate warnings, symbols, symptoms of poisoning, antidotes, treatments or procedures to take in case of overexposure and other cautionary statements as required by the regulations of the Federal Insecticide, Fungicide, Rodenticide Act (FIFRA), based on the product's toxicity and use classification.

(7) Numbers or other symbols to identify the manufacturer's lot and batch stamped on the pesticide container any place where they can be readily seen, provided however, it shall be unlawful to have more than one lot or batch number in a single package.

(8) It shall be unlawful to sell custom mixes without identifying the purchaser on the label or labeling.

(9) All printing on the label shall be made with a nonsmearing permanent substance.

#### §7.4. *Registration of Pesticides.*

(a) In addition to the requirements contained in Subchapter C, Chapter 76 of the Act, the application for registration of a pesticide shall include:

(1) a partial list of dealers who will be distributing the pesticide where samples of the product may be obtained; and

(2) the location of the lot or batch number on the container of the pesticide.

(b) If the registrant distributes a pesticide under more than one brand name or more than one formulation, each brand or formulation must be registered as a separate product.

(c) It shall be a violation to continue to distribute a pesticide for which a renewal application, including the required fee, has not been received after December 31 of the year of current registration.

(d) Renewal or registration fees collected by the commissioner as a condition for registration of a pesticide shall not be prorated.

§7.6. *Special Local Needs.* Before approving the registration of a pesticide under §76.046 of the Act, the commissioner shall determine:

(1) that a local need exists;

(2) that the applicant meets all other requirements for registration of a pesticide; and

(3) that the particular use of the pesticide has not been denied, suspended, or canceled by the EPA.

#### §7.5. *Custom Mixes.*

(a) Custom mixes shall be sold only to those whose name appears on the label or labeling of the pesticide container and shall not be placed on the shelf for resale.

(b) Pesticide containers of custom mix pesticides shall bear an ingredient statement as required by §7.3 of this title (relating to Label Requirements).

#### §7.7. *Experimental Use Permits.*

(a) Application for experimental use permits will be on forms prescribed by the commissioner and shall contain the following information:

(1) the name and address of the applicant;

(2) the name of the manufacturer of the product;

(3) the name and address of the person responsible for the experimental program if different from the applicant;

(4) the name of the pesticide;

(5) an ingredient statement as required in §7.2 of this title (relating to Resident Agents);

(6) the use or uses requested for the experimental permit; and

(7) the estimated amount of the product to be used.

(b) A registration fee of \$30 shall accompany each experimental use permit application if the pesticide is not currently registered for other uses in the state.

(c) The holder of an experimental use permit shall, as soon as possible, submit to the appropriate regulatory agency, the results of the experimentation for which the permit was issued.

#### §7.8. *Pesticide Dealers.*

(a) It shall be a violation for a pesticide dealer required to be licensed by Subchapter D of the Act to continue to distribute restricted-use or state-limited-use pesticides after December 31 of each year without first having renewed his license in accordance with the Act.

(b) Application for a dealer's license shall be made on forms prescribed by the commissioner and shall include the following:

(1) the name of the business;

(2) the mailing address and location of the business; and

(3) the name and address of the applicant's manager or agent.

(c) All applicants must submit a license fee of \$25 for each license requested. This fee will not be prorated. Dealers currently licensed under the Texas Herbicide Law, codified at Texas Agriculture Code, Chapter 75 (1981), will not be required to pay an additional fee as long as the herbicide license covers only one outlet. If the herbicide dealer's license is for more than one outlet, a license will be issued to one such outlet at no charge. Each additional outlet licensed must pay the pesticide dealer's license fee.

(d) A pesticide dealer's license shall not be transferable. In case of a change in ownership of a licensee's business, outlet, or facilities, a new application and fee are required.

(e) The record-keeping requirements imposed on licensed pesticide dealers by §76.075 of the Act may be satisfied by invoices, if such invoices are kept separate from the licensee's other sales records and contain:

(1) the name, address, certified applicator number, or dealer license number of the person to whom the pesticide was sold or delivered;

(2) the date of sale;

(3) the brand name, registration number, and manufacturer of pesticide; and

(4) the quantity of pesticide sold.

(f) Restricted-use or state-limited-use pesticides may only be sold to certified applicators, persons acting under the direct supervision of a certified applicator, or a licensed dealer.

**§7.9. Enforcement.** In addition to the enforcement powers of the commissioner found in §§76.151-76.153 of the Act, the commissioner, or his authorized agent, may enter the premises of a registrant or dealer during normal business hours to:

- (1) examine records,
- (2) inspect any apparatus subject to the Act, or
- (3) inspect pesticide packaging, labels and labeling information for compliance with the Act.

**§7.10. Pesticide Use and Application Training Programs.**

(a) Any person or education institution may develop programs to train pesticide applicators in any phase of pesticide use.

(b) A training program must be approved by the commissioner if it falls within one or more categories:

- (1) conducted as part of the official certification process;
- (2) conducted to maintain applicator certification in lieu of retesting; or
- (3) claiming to be "approved," or "accepted," or using any term in its name that would lead the public to believe that it is approved.

(c) Any person or institution may request the commissioner to approve its training program. The request should include:

- (1) the categories or subcategories that will be included in the program;
- (2) a complete description of all information to be presented, and the methods used for presentation;
- (3) the eligibility requirements for those allowed to attend the program;
- (4) an estimate of the number of applicators to be trained; and
- (5) the location of the proposed training sites, provided, however, that if a similar program is already being offered in the same area, a statement of why another one is needed is required.

(d) The commissioner may consult with officials of other regulatory agencies before he approves a training program if the training program involves applicators in categories under the jurisdiction of such agencies.

**§7.11. Applicator Certification.**

(a) The Texas Department of Agriculture will certify commercial and noncommercial applicators in the following license use categories and subcategories:

- (1) agriculture pest control,
  - (A) field crop pest control,
  - (B) fruit and vegetable pest control,
  - (C) weed and brush control,
  - (D) predatory animal control,
  - (E) farm storage pest control,
  - (F) fumigation,
  - (G) animal pest control,
    - (i) tick, louse, and mite control,
    - (ii) fly control;
- (2) forest pest control,
  - (A) insect and disease control,
  - (B) weed and brush control;
- (3) ornamental and turf pest control,
  - (A) plant pest control,
  - (B) greenhouse pest control,
  - (C) weed control;
- (4) seed treatments;
- (5) right-of-way pest control;

- (6) aquatic pest control,
  - (A) aquatic plant pest control,
  - (B) aquatic animal pest control.

(b) The Texas Department of Health will certify commercial and noncommercial applicators involved in public health pest control which shall encompass the following subcategories:

- (1) vector control,
- (2) rodent control, and
- (3) sanitation.

(c) Applicators involved in regulatory pest control or demonstration and research pest control will be licensed by the regulatory agency responsible for the category or subcategory of pest control for which the license is requested. Regulatory pest control or demonstration and research pest control licenses may be issued for any category or subcategory listed in this section.

**§7.12. Classification of Commercial and Noncommercial Licenses.**

(a) All testing conducted by a regulatory agency under the authority of §76.106 of the Act shall be designed to cover the information necessary for an applicant to demonstrate that he is competent to use and supervise the use of restricted-use and state-limited-use pesticides in a safe and effective manner. Anyone who makes a passing score on one or more tests will be eligible to be a certified applicator in those categories or subcategories for which a passing score was received and shall be certified as soon as all other licensing requirements are met.

(b) A fee of \$10 shall be required for testing each applicant in each license use category, and must be paid before the test or tests are given.

**§7.13. Commercial Applicator License.**

(a) An application for an original or renewal commercial applicator license filed with a regulatory agency pursuant to §76.108 of the Act shall contain the following information:

- (1) the name and address of the company,
- (2) the name and address of the owner or manager,
- (3) the name and address of each certified applicator employed by the company,
- (4) the categories and subcategories for which the license is requested,
- (5) the type, number, serial number, and license number of all application equipment, whether ground, aircraft (include "N" number), or other,
- (6) a statement of whether the applicant has ever had a previous license suspended, revoked, or refused in this or any other state, and applicable details,
- (7) a statement of whether the applicant has ever been convicted of a felony and applicable details, and
- (8) the name and address of a resident agent for service of process for any actions instituted against the licensee in the administration or enforcement of the Act or this chapter.

(b) Each application for an original or renewal commercial applicator's license must be accompanied by an annual license fee of \$75.

(c) Before a commercial applicator license may be issued, either the applicant, or one or more of his full-time employees must be a certified applicator in each license use category requested. The licensee shall notify the proper regulatory agency immediately of any change of certified ap-

plicators, or change in license status of any certified applicator employee, owner, or associate of the licensee, or any change of address of the licensee.

**§7.14. Commercial Applicator Proof of Financial Responsibility.**

(a) A bond or liability insurance in the amounts and coverages shown in this subsection shall be required for each piece of application equipment falling within the following categories:

Category of Application Equipment	Amount and Extent of Coverage
Aerial	\$10,000 bodily injury
	\$20,000 aggregate
	\$10,000 property damage
Ground	\$5,000 bodily injury
	\$10,000 aggregate
	\$5,000 property damage
Hand Operated	\$5,000 bodily injury
	\$10,000 aggregate
	\$5,000 property damage

(1) The licensing agency may require a higher amount of surety bond or insurance from an applicant or current licensee than those amounts listed in this section if, in the determination of the licensing agency, the past performance of the applicant or current licensee warrants a greater degree of financial responsibility be shown.

(2) All insurance policies must include chemical drift coverage in the amount for all pesticides applied.

(3) A certified copy of the insurance policy, insurance certificate, or bond, signed by the proper authority for the insurance company or surety, must be submitted to the licensing agency as proof of coverage.

(b) The licensing agency must be notified at least 10 days before the insurance coverage or bond of a licensee is reduced or canceled.

(c) Each commercial applicator license will be automatically suspended, if bond or insurance coverage is:

- (1) canceled,
- (2) not maintained at the minimum amount required, or
- (3) not renewed before the expiration date of the bond or policy (renewal in this instance requires official certification to the regulatory agency of the renewal by the insuring company or surety).

(d) The license of a commercial applicator may be reinstated when the regulatory agency has proper notification that sufficient coverage is in full force and effect.

**§7.15. Noncommercial Applicator License**

(a) An application for an original or renewal noncommercial applicator license filed with a regulatory agency pursuant to §76.109 of the Act shall contain the same information as required for a commercial applicator license application by §7.12 of this title (relating to Classification of Commercial and Noncommercial Licenses).

(b) Nongovernmental applicants shall pay an annual license fee of \$50 at the time of application. No fee will be charged for a license issued to employees of a governmental entity for applying pesticides as part of their official duties. Governmental employees who apply restricted-use or state-limited-use pesticides outside of their governmental employment must pay the \$50 fee.

(c) Noncommercial applicator licenses will be issued only to persons who have qualified as certified applicators in the license use categories or subcategories for which the license is requested.

(d) It shall be the responsibility of the licensee to give written notice to the licensing agency of any change of his address or employment.

**§7.16. Certified Private Applicator License.** The Texas Department of Agriculture will establish and supervise a program to certify private applicators on a voluntary basis, to allow them to comply with federal law. This program will be based on the minimum requirements accepted by the administrator of the EPA for any approved state plan.

**§7.17. Expiration and Renewal of Licenses.**

(a) Renewal of a commercial or noncommercial applicator license must be made prior to the expiration of the applicator's current license. The holder of a license that expires without renewal shall not operate as a commercial or noncommercial applicator until a new application has been received and approved by the regulatory agency.

(b) Pursuant to §76.113 of the Act, the head of the licensing agency, in determining whether additional training shall be required of current licensees before renewal of their applicator license, may consider changes in technology, pesticide related problems, or the performance of individual applicators. If general retraining and/or retesting is required for all applicators in a category or subcategory, the licensing agency will publish notice at least six months in advance of the license renewal date. If individual retraining and/or retesting is required as a result of the applicator's performance, the agency may give notification and set a time and place of retraining that would be in the best interest of public health and environmental protection.

**§7.18. Records.**

(a) The records of pesticide uses required to be kept by licensees under the provisions of §76.114 of the Act shall include:

- (1) the date of application, including the times of day or hours of operation;
  - (2) the person for whom the application was done (owner or lessee);
  - (3) the location of the land where the application was made, stated in a manner that would permit inspection by authorized parties;
  - (4) the pesticide applied including
    - (A) its EPA registration number,
    - (B) active ingredient(s),
    - (C) rate of active ingredient per unit,
    - (D) total amount of active ingredients, and
    - (E) total volume of spray mix applied per unit;
  - (5) the name of the pest for which it was used;
  - (6) the site treated (example: name of crop, kind of animal, etc.);
  - (7) climatological data, including but not limited to wind direction and velocity, air temperature, etc; and
  - (8) the FAA "N" number of aerial application equipment, or identification number of other types of application equipment, and decal number affixed to the application unit.
- (b) The regulatory agency may examine these records at any time during normal business hours, or by written request, require the licensee to submit a copy of these records.

**§7.19. Registration and Inspection of Equipment.**

(a) All application equipment used by commercial applicators must be registered with the licensing agency. The agency shall issue to the licensee a decal to be attached to each such piece of equipment in a conspicuous place. The decal will contain the following information:

- (1) the year licensed;
- (2) an identification number; and
- (3) the name of the issuing agency.

(b) The licensee shall notify the regulatory agency of any equipment changes made during the license year, and remove the decal before giving up possession of the equipment.

(c) All application equipment used by commercial applicators is subject to inspection by the regulatory agency at any reasonable time. Such equipment must be maintained in a condition that will provide safe and proper application of the pesticide. If the inspector finds that it is not, he shall require the needed repairs or adjustments before allowing the use of such equipment.

**§7.20. Complaint Investigation.**

(a) Any person with cause to believe that any provision of the Act or this chapter has been violated or who has experienced adverse effects from a pesticide application may file a written complaint with the appropriate regulatory agency. Such complaint shall be subscribed by the complaining party and set forth in detail the facts of the alleged violation.

(b) The agency will investigate the complaint, and make a full written report.

(1) A preliminary report may be given to the parties directly involved in the incident. In cases where no apparent adverse effects can be documented, the agency will give the information to the complaining party and cease the investigation.

(2) The final report will be made after all aspects of the case have been determined to the satisfaction of the investigating agency. This report will be made available to the parties concerned upon written request. The final report will prevail over the preliminary report if a conflict should arise.

(c) The investigating agency shall, as soon as possible, notify the applicator(s) believed to be responsible for the complaint and the owner or lessee of the land where the application occurred.

(d) The investigating agency will not estimate monetary losses sustained.

**§7.21. Storage and Disposal of Pesticides.**

(a) No person may dispose of, discard, or store any pesticide or pesticide container in a manner that may cause or result in injury to humans, vegetation, crops, livestock, wildlife, pollinating insects, or pollution of any water supply or waterway.

(b) Pesticides intended for distribution or sale must be displayed or stored within an enclosed building or fenced area, and may not be displayed on sidewalks, parking lots, or similar open areas without surveillance.

(c) Pesticides in leaking, broken, corroded, or otherwise unsafe containers, or with illegible labels shall not be displayed or offered for sale. Such containers will be handled in

a manner to prevent environmental contamination prior to proper disposal or return to manufacturer.

(d) Pesticide containers, concentrates, spray mixes, container rinsates, and/or spray system rinsates that are to be discarded shall be disposed of in accordance with pesticide label directions or in accordance with the provisions of the Texas Solid Waste Disposal Act (Texas Civil Statutes, Article 4477-7).

(e) The applicator, the owner of the pesticide, and/or the person in control of the mixing site, shall be jointly and severally liable for proper storage and disposal of pesticide containers and contents. It will be acceptable for any one of the parties involved to assume liability for compliance.

(f) All pesticide dealers shall have a list of poison control centers in the state to contact in the case of pesticide poisoning.

**§7.22. Use Inconsistent with Label Directions.** It shall be a violation for any person to use or cause to be used a pesticide in a manner inconsistent with its label or labeling. Use inconsistent with the label includes, but is not limited to:

(1) Applications at sites, rates, concentrations, intervals, or under conditions not specified in the labeled directions, except:

(A) applying a pesticide at any dosage, concentration, or frequency less than that specified on the labeling;

(B) applying a pesticide against any target pest not specified on the label or labeling if the application is to the crop, animal, or site specified on the label or labeling, unless the commissioner has determined that the use of the pesticide against other pests would cause an unreasonable, adverse effect on the environment, and he has required a statement on the label of the pesticide so stating this determination;

(C) employing any method of application not prohibited by the labeling;

(D) mixing a pesticide or pesticides with a fertilizer when such mixture is not prohibited by the labeling.

(2) Tank mixing of pesticides, or using application techniques, or equipment prohibited by the label.

(3) Failure to observe re-entry intervals, preharvest intervals, or worker protection requirements:

(A) it is the responsibility of the person in control of the commodity or site treated to be knowledgeable of and comply with the requirements of this section;

(B) if a commercial applicator furnishes the pesticide, it is his responsibility to notify the person in control of the commodity or site treated of the above requirements, prior to, or at the time of treatment by

- (i) furnishing a label of the pesticide(s) used, or
- (ii) providing the requirements in writing.

(4) Improper storage or disposal of the pesticide or its container.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818287

Reagan V. Brown  
Commissioner  
Texas Department of Agriculture

Effective Date: December 7, 1981

Proposal Publication Date: October 9, 1981

For further information, please call (512) 475-6346.

## TITLE 22. EXAMINING BOARDS

### Part XXVII. Board of Tax Assessor Examiners

#### Chapter 627. Assessor's Code of Ethics

The Board of Tax Assessor Examiners adopts amendments to §627.1 (038.04.00.001) without changes to the proposed text published in the September 29, 1981, issue of the *Texas Register* (6 TexReg 3626).

The Board of Tax Assessor Examiners amends §627.1 (038.04.00.001) to consolidate and clarify Texas Civil Statutes, Article 7244b, §23, and thereby establishing the Assessor's Code of Ethics approved by all practicing registered professional assessors. The result of this rule is that the taxpayers of Texas are assured that the persons appraising and/or assessing their property for ad valorem tax purposes have sworn to an ethical standard of conduct.

The board received comments on this rule concerning paragraph (3) which indicated the content was hard to understand; its purpose unclear; and that it needed to be reworded. While a majority agreed completely, some felt that paragraph (3) was not clearly understandable. Comments on paragraph (5) objected to the word "indirectly." This rule was approved by 474 of the registered professional assessors of Texas. There were 29 who voted against this rule.

Norris Hall and Gray Chamberlain made comments for the rule. Roland Hutton and Lee Harper opposed paragraph (3) only; P. B. Castleberry opposed paragraphs (3) and (5) only; and David Crockett, George F. West, and Ernest Duncan made comments against the rule.

Since the majority of the registered professional assessors of Texas approved the amendment of this rule without changes, the board did not wish to make any changes.

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.

Ben H. Tow  
November 17, 1981

The amendments are adopted under authority of the Registration and Professional Certification Act, Texas Civil Statutes, Article 7244b, §7 and §23, which gives the Board of Tax Assessor Examiners the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Issued in Austin, Texas, on November 17, 1981.

Doc. No. 818312      Ben H. Tow  
Executive Director  
Board of Tax Assessor Examiners

Effective Date: December 8, 1981  
Proposal Publication Date: September 29, 1981  
For further information, please call (512) 837-9800.



The Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. An institution of higher education must have notice posted for at least 72 hours before the scheduled meeting time. Although some notices may be received and filed too late for publication before the meeting is held, all filed notices will be published in the *Register*. Each notice published includes the date, time, and location of the meeting; an agenda or a summary of the agenda as furnished for publication by the agency; where additional information may be obtained; and the date and time of filing.

A political subdivision covering all or part of four or more counties must have notice posted for at least 72 hours before the scheduled meeting time. Each notice published includes the date, time, and location of the meeting and where further information may be obtained. These notices are published under the heading "Regional Agencies," alphabetically by date filed.

Any of the governmental entities named above must have notice of an emergency meeting, or an emergency addition or amendment to an agenda, and the reason for such emergency, posted for at least two hours before the meeting is convened. Emergency notices filed by these entities will be published in the *Register*; however, notices of an emergency addition or amendment to an agenda filed by a regional agency will not be published in the *Register* since the original agendas for these agencies are not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

## State Banking Board

*Thursday, November 19, 1981, 2 p.m.* The State Banking Board met in emergency session at 2601 North Lamar, Austin, to vote on several applications. The meeting was rescheduled on an emergency basis from November 16, 1981, due to the lack of quorum on the 16th and the pressing nature of the agenda items.

Information may be obtained from O.A. Cassity, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Filed: November 17, 1981, 3:34 p.m.  
Doc. No. 818316

## Texas Department of Health

*Sunday, December 6, 1981, 9 a.m.* The Texas Radiation Advisory Board of the Texas Department of Health will meet in Board Room T-607, 1100 West 49th Street, Austin. Items on the agenda summary include: bureau chief's summary on radiation control activities; report on activities of the Division of Compliance and Inspection; report on activities of the Division of Licensing, Registration, and Standards, including proposed rules on fees and wireline service operations and a status report on low-level waste rules; discussion on recent federal legislation (Senate Bill 799, Title III, Consumer-Patient Radiation Health and Safety Act of 1981); requested appearance of Robert Gallagher on appointments to the

board; discussion of committee activity; and setting the date for the first quarterly meeting of 1982.

Information may be obtained from David M. Cochran, P.E., 1100 West 49th Street, Austin, Texas, (512) 458-7542.

Filed: November 18, 1981, 3:49 p.m.  
Doc. No. 818330

## Texas Historical Commission

*Monday, November 30, 1981, 9:30 a.m.* The Texas Antiquities Committee of the Texas Historical Commission will meet in Rooms 206 and 207 of the Texas Law Center, 1414 Colorado, Austin, to approve minutes of the October 27, 1981, committee meeting 52; present the revisions of the budget proposed at the previous meeting; consider the nominations of four buildings on the Sam Houston campus; and discuss the activities and results of compiling the Sunset Review report.

Information may be obtained from Cindy Smetak, 105 West 16th Street, Austin, Texas, (512) 475-6328.

Filed: November 19, 1981, 9:17 a.m.  
Doc. No. 818347

## State Board of Insurance

*Thursday, November 19, 1981, 10 a.m.* The State Board of Insurance made an emergency addition to the agenda of a meeting held in Room 414, 1110 San Jacinto Street, Austin. The addition concerned a decision on pleas to the jurisdiction filed by the Texas Catastrophe Property Insurance Association in the appeal of Hugh Miller from action of the TCPIA. The addition was made on an emergency basis because it was necessary for the board to rule on the pleas prior to a hearing scheduled on November 23, 1981.

Information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas, (512) 475-2950.

Filed: November 18, 1981 2:41 p.m.  
Doc. No. 818329

## Pan American University

*Tuesday, December 1, 1981.* The Pan American University Board of Regents and committees of the board will meet in the conference room of the PAU Administration Building, Edinburg. The times and agendas are as follows

*9:30 a.m.* The Finance Committee will consider the following: budget changes (restricted donations and unappropriated surplus); authorization for bids on banking services for demand deposits; and informational items.

*10 a.m.* The Building and Grounds Committee will consider the following: final payment to Stotler Construction Company; bids on furniture for the new administration building; depreciation account for the president's house; hanging portrait of Dr. Arnulfo Oliveira; animal facility; and informational items.

*11 a.m.* The Academic and Developmental Affairs Committee will consider the following: structure of the Committee on the Vice President for Academic Affairs Search; student financial aid—satisfactory progress; procedure for

selecting academic deans; class reports and small class size reports; informational items; and an executive session on personnel items including employment and a request for a leave of absence.

**1:30 p.m.** The Board of Regents will consider the following: minutes of the previous meeting; reports of the Finance, Building and Grounds, and Academic and Developmental Affairs Committees and the Committee of the Whole; gifts and donations; and the next meeting of the board.

Information may be obtained from Dr. Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2101.

Filed: November 19, 1981, 9:19 a.m.  
Doc. Nos. 818348-818351

## Board of Pardons and Paroles

**Monday-Friday, November 30-December 4, 1981, 9 a.m. daily.** The Board of Pardons and Paroles will meet in Room 711, Stephen F. Austin Building, Austin. According to the agenda, the board will review cases of inmates for parole consideration; act on emergency reprieve requests and other acts of clemency; review reports regarding persons on parole; review procedures affecting the day-to-day operation of the support staff, review and initiate needed rule changes relating to general operation, executive clemency, parole, and all hearings conducted by the agency; and take action on gubernatorial directives.

Information may be obtained from Ken Casner, 711 Stephen F. Austin Building, Austin, Texas, (512) 475-3363.

Filed: November 17, 1981, 2:12 p.m.  
Doc. No. 818314

## State Board of Pharmacy

**Tuesday, December 8, 1981, 9 a.m.** The State Board of Pharmacy will meet in Room 117, Sam Houston Building, 14th and Brazos Streets, Austin. According to the agenda, the board will administer the Texas Jurisprudence Examination and conduct reciprocity hearings for licensure as pharmacists.

Information may be obtained from Priscilla Jarvis, Southwest Tower, 211 East Seventh Street, Suite 1121, Austin, Texas, (512) 478-9827.

Filed: November 18, 1981, 9:24 a.m.  
Doc. No. 818327

## State Property Tax Board

**Friday, December 11, 1981, 9 a.m.** The State Property Tax Board will meet in the agency conference room, 9501 IH 35 North, Austin. Items on the agenda include: approval of minutes of the September 25, 1981, board meeting; consideration of adoption of the proposed industrial section of the *General Appraisal Manual*, adoption of new rules concerning tax record requirements, training and education courses and materials, appraisal review board practice and procedures, adoption of amendment to valuation procedures rule, as proposed in the November 10, 1981, issue of the *Texas Register*; board approval of guidelines for solar or wind-powered energy devices; board designation of staff empowered to approve contract under Property Tax Code, §6.24(c) and §6.30(d); discus-

sion of plans for organization of disseminated information; and executive session for discussion of personnel and legal matters.

Information may be obtained from Kenneth E. Graeber, 9501 IH 35 North, Austin, Texas 78761, (512) 837-8622.

Filed: November 18, 1981, 8:52 a.m.  
Doc. No. 818319

## Public Utility Commission of Texas

**Monday, November 30, 1981, 9 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing and a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The prehearing concerns Docket 4127—application of San Miguel Electric Cooperative, Inc., for approval of rate and deferral of depreciation. The prehearing conference concerns Docket 4145—appeals of Texas-New Mexico Power Company from the ratemaking ordinances of the Cities of Darrouzett, Booker, Follett, Texas City, Dickinson, Brazoria, West Columbia, La Marque, League City, Sweney, and Friendswood.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 19, 9:20 a.m. and November 18, 1981, 9:28 a.m., respectively.  
Doc. Nos. 818352 and 818322

**Tuesday, December 1, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4184—application of the Lower Colorado River Authority for relief and for enforcement of an existing rate order.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 19, 1981, 9:20 a.m.  
Doc. No. 818353

**Wednesday, December 2, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4175—application of Forest Glen Utility Company for authority to increase rates within Bexar County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 18, 1981, 9:28 a.m.  
Doc. No. 818323

**Friday, December 4, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4162—inquiry into the rate increase of Utilities Operations, Inc. (water).

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 18, 1981, 9:28 a.m.  
Doc. No. 818324

**Wednesday, December 9, 1981, 9 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in

Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4132—inquiry of the commission concerning lifting the service quality penalty on General Telephone Company of the Southwest.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 18, 1981, 3:50 p.m.  
Doc. No. 818331

**Wednesday, December 9, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4002—application of Houston Lighting and Power Company to amend its certificate of convenience and necessity for transmission lines within Washington County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 19, 1981, 9:20 a.m.  
Doc. No. 818354

**Thursday, December 10, 1981, 9 a.m.** The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin, to consider issuance of a final order in Docket 3920—application of Southwestern Bell Telephone Company for authority to change rates.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 19, 1981, 9:20 a.m.  
Doc. No. 818355

**Monday, December 14, 1981, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 4163—inquiry into the water utility rates of Cut'N Shoot Estates.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 18, 1981, 3:50 p.m.  
Doc. No. 818332

**Thursday, January 7, 1982, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, on the merits in Docket 4087—application of Lamar Water Supply Corporation for a rate increase for water utility service within Aransas County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 18, 1981, 9:28 a.m.  
Doc. No. 818325

**Monday, January 25, 1982.** The Hearings Division of the Public Utility Commission of Texas will conduct hearings in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The times and dockets are as follows.

**9 a.m.** Docket 4127—application of San Miguel Electric Cooperative, Inc., for approval of rate and deferral of depreciation.

**10 a.m.** Docket 4026—application of Kerrville South Water Company for authority to increase rates within Kerr County.

Information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 19, 1981, 9:20 a.m., and November 18, 1981, 3:50 p.m., respectively.  
Doc. No. 818356 and 818333

## University of Texas System

**Saturday, November 21, 1981, 8:30 a.m.** The Intercollegiate Athletics Council for Men of the University of Texas System met in Room 240, Bellmont Hall, University of Texas, Austin. Items on the agenda included: approval of minutes; approval of change in tennis schedule; basketball radio network; budget for NCAA cross country; bats and water problem in stadium; ticket policy for Oklahoma University/University of Texas football game; reports from the Option, Athletic Facilities, and Ad Hoc Building Committees, the latter concerning ninth level remodeling, football support facilities, and tennis facilities; and an executive session to discuss personnel matters pursuant to Texas Civil Statutes, Article 6252-17, §2(g).

Information may be obtained from Haila Kauffman, P.O. Box 7399, Austin, Texas 78712, (512) 471-7348.

Filed: November 17, 1981, 10:34 a.m.  
Doc. No. 818307

## Texas Woman's University

**Thursday, December 3, 1981, 10 a.m.** The Texas Woman's University Board of Regents will meet on the 16th floor of the Administration and Conference Tower, Texas Woman's University, Denton. Items on the agenda include: approval of minutes of the August 6, 1981, meeting; personnel additions and changes; acceptance of gifts and grants; agreements and contracts; award of federal funds; sale of surplus university property; various change orders; certificates of substantial completion; small class reports for summer session II and fall 1981; ratifying mail ballot authorization for Page, Southerland and Page to serve as architects/engineers on the renovation of Stoddard Hall and the utility distribution system; development issues; contract with the City of Denton regarding parking regulations on streets contiguous to university property; citation to Dr. Lauro Guerra; and the report of the president on general university business.

Information may be obtained from Dr. Mary Evelyn Blagg Huey, Texas Woman's University, Denton, Texas 76204, (817) 383-1466.

Filed: November 18, 1981, 9:28 a.m.  
Doc. No. 818326

## Texas Water Commission

**Tuesday, December 15, 1981, 10 a.m.** The Texas Water Commission will conduct a hearing in the Stephen F. Austin Building, 1700 North Congress, Austin, regarding a petition for conversion of Zapata County Water Control and Improvement District, San

Ygnacio, into a municipal utility district operating under Chapter 54 of the Texas Water Code.

Information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: November 17, 1981, 3:16 p.m.  
Doc. No. 818315

## Regional Agencies Meetings Filed November 17, 1981

*The Austin-Travis County MH/MR Center*, Board of Trustees Personnel Committee, met in emergency session in the executive director's conference room, 1430 Collier Street, Austin, on November 20, 1981, at noon. Information may be obtained from Cynthia C. Garcia, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 50.

*The Golden Crescent Council of Governments*, Board of Directors, will meet in the La Salle Room, Victoria Bank and Trust, 120 South Main, Victoria, on November 25, 1981, at 5 p.m. Information may be obtained from Joe Atkinson, P.O. Box 2028, Victoria, Texas 77901, (512) 578-1587.

Doc. No. 818317

## Meetings Filed November 18, 1981

*The Austin-Travis County MH/MR Center*, Board of Trustees Executive Committee, met in emergency session in the conference room, 1430 Collier Street, Austin, on November 20, 1981, at 12:30 p.m. Information may be obtained from Debbie Sandoval, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 31.

*The Central Texas Council of Governments*, General Membership, met in emergency session at the Fort Hood Mini Dome, Fort Hood, on November 20, 1981, at 10:30 a.m. Information may be obtained from Walton B. Reedy, P.O. Box 729, Belton, Texas 76513.

*The Central Texas MH/MR Center*, Board of Trustees, will meet at 408 Mulberry, Brownwood, on November 24, 1981, at 4:30 p.m. Information may be obtained from Janie Clements, P.O. Box 250, Brownwood, Texas, (915) 646-9574, ext. 35.

*The Cherokee County Appraisal District*, Board of Directors, will meet in the county court room, Cherokee County Courthouse, Rusk, on November 24, 1981, at 7 p.m. Information may be obtained from S. R. Danner, P.O. Box 494, Rusk, Texas 75785.

*The Lower Rio Grande Valley Development Council*, Board of Directors, will meet in the Harlingen Chamber of Commerce, Harlingen, on November 24, 1981, at 1 p.m. The board will also meet in the same location on December 17, 1981, at 1 p.m. Information may be obtained from Robert A. Chandler, 207 Texas Commerce Bank Building, McAllen, Texas 78501, (512) 682-3481.

*The Northeast Texas Health Systems Agency*, Executive Committee, will meet in the agency offices, Suite 201, Travis Terrace Building, 505 East Travis Street, Marshall, on December 1, 1981, at 7 p.m. Information may be obtained from Bayard S. Galbraith, 505 East Travis Street, Suite 201, Marshall, Texas 75670, (214) 938-8331.

Doc. No. 818328

## Meetings Filed November 19, 1981

*The Region IV Education Service Center*, Board of Directors, will meet in the Capitol Suite of the Houston Club, 811 Rusk, Houston, on December 8, 1981, at 6 p.m. Information may be obtained from Tom Pate, P.O. Box 863, Houston, Texas 77001, (713) 462-7708.

*The Sabine River Authority of Texas*, Board of Directors, will meet in the Adolphus Hotel, Dallas, on November 30, 1981, at 9 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (713) 883-2531.

Doc. No. 818357

The following documents are required to be published in the *Register*: applications to purchase control of state banks filed by the Banking Commissioner of Texas pursuant to Texas Civil Statutes, Article 342-401a(B)(6); changes in interest rate filed by the Savings and Loan Commissioner of Texas pursuant to Texas Civil Statutes, Article 5069-1.07; and consultant proposal requests and awards filed by state agencies, regional councils of government, and the Texas State Library pursuant to Texas Civil Statutes, Article 6252-11c. In order to allow agencies to communicate information quickly and effectively, other information of general interest to the public of Texas is published as space allows.

## Office of the Attorney General

### Solid Waste Enforcements

Notice is hereby given by the State of Texas of the following resolution of the Texas Solid Waste Disposal Act enforcement lawsuit. Thirty days from the date of this notice, an agreed final judgment will be submitted to the court indicated below for entry. The identity of the subject litigation and the terms of the agreed judgment are as follows:

**Case Title:** State of Texas *v.* Chemical Manufacturing Exchange, Inc., et al

**Cause Number and Court:** 80A-202; 173rd District Court, Houston County

**Waste Site:** Houston County—Latexo, 100 Old Latexo Road and a saltwater injection well, Woodbine formation, Guice 2, RRC 16015

**Injunction:** Defendants enjoined to properly dispose of all contaminated soils and refrain from storing, processing, or disposing of solid wastes in violation of the Texas Solid Waste Disposal Act.

**Civil Penalty:** Chemical Manufacturing Exchange, Inc.—\$8,000; George Bartee Construction Co.—\$2,000

This agreed judgment will be submitted in resolution of alleged violations of the Texas Solid Waste Disposal Act and agency regulations promulgated thereunder. Comments and requests for copies/inspection of the judgment may be directed to Texas Attorney General's Office, Environmental Protection Division, P.O. Box 12548, Austin, Texas 78711, (512) 475-4143.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818320 Susan Plettman  
Assistant Attorney General

Filed: November 18, 1981, 9:23 a.m.  
For further information, please call (512) 475-4143.

## Banking Department of Texas

### Applications To Purchase 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 November 12, 1981, the banking commissioner received an application to acquire control of Citizens State Bank, Princeton, by L.F. Collections, Inc., (by William C. Kennedy, Jr., of Dallas); Dondi Group, Inc., (by Don R. Dixon of Dallas); Barker Development Corporation (by Tyrell G. Barker of Richardson); Charles R. Gary of Dallas; James F. Wood of McKinney; and David E. Wise, John W. Hamilton, Edward P. Clark, Michael R. Lewis, and Robert H. Crawford, all of Dallas.

On November 13, 1981, the banking commissioner received an application to acquire control of South Loop Bank, Houston, by M. Robert Hecht, T. Lamar Watts, Hershel M. Rich, and Johnny H. Baker, all of Houston.

On November 13, 1981, the banking commissioner also received an application to acquire control of the Bank of Woodson, Woodson, by Jerry R. Powell of Lubbock, and Roy L. Ryan of Dumas.

Additional information may be obtained from Robert E. Stewart, 2601 North Lamar, Austin, Texas 78705, telephone (512) 475-4451.

Issued in Austin, Texas, on November 13, 1981.

Doc. No. 818208 O.A. Cassity  
818288 & Assistant General Counsel  
818306 Banking Department of Texas

Filed: November 16, 1981, 10:36 a.m. and  
November 17, 1981, 9:23 a.m.

For further information, please call (512) 475-4451.

## Texas Commission for the Deaf

### Consultant Proposal Request

The Texas Commission for the Deaf, in compliance with Texas Civil Statutes, Article 6252-11c, is requesting proposals for the operation of a summer camp program for deaf and hearing-impaired, school-aged children, (hereinafter referred to as an outdoor training program for deaf students.)

The commission is seeking a camp program aimed at providing a broad range of recreational and educational camping experiences, for 75 to 100 young deaf and hearing-impaired campers between the ages of 8 and 14. In addition, the commission desires to include a counselor-in-training (CIT) program. The CIT program is to focus on the development and preparation of future camp counselors. Such counselors in training will be between the ages of 15 and 17 and are to be those youngsters who are deaf or hearing-impaired.

The underlying concern of the commission is to provide a sound, well-structured camping experience for deaf and hearing-impaired school children. The camp environment should be one which:

- (1) promotes an atmosphere for learning, maturity, and socialization;
- (2) is localized within a facility free of restrictive communication barriers;
- (3) promotes each youngster's ability to function at his fullest potential.

For the purposes stated above, the commission is requesting proposals from such camp facilities capable of operating a

high quality program specifically directed to and suited for deaf and hearing-impaired youngsters.

**Description of Services.** In its intent to design a unique outdoor training program for deaf students, the Texas Commission for the Deaf recommends that respondents:

- (1) be licensed by the Texas Department of Health;
- (2) be willing to cooperate with the Texas Commission for the Deaf regarding the commission's goals, standards, and recommendations;
- (3) provide:
  - (a) nourishing meals three times daily and at least one in-between meal or after dinner snack,
  - (b) proper medical care with trained, licensed personnel on grounds (preferably an R.N.),
  - (c) proper bedding, linens, towels, etc. (optional),
  - (d) comprehensive campsite insurance,
  - (e) safe and comfortable cabins, mess hall, showers, and restrooms,
  - (f) facilities that are clean and pleasant to look at,
  - (g) programs that are established for deaf campers between the ages of 8 and 14 and for counselors in training (CIT) between the ages of 15 to 17,
  - (h) a single two-week camping program,
  - (i) in-service training program for counselors and CITs, and
  - (j) camping facilities to accommodate 75 to 100 campers;
- (4) include activities such as:
  - (a) water sports, i.e., swimming, fishing, canoeing, etc.,
  - (b) horseback riding (optional),
  - (c) archery,
  - (d) riflery (optional),
  - (e) arts and crafts,
  - (f) nature trail hikes,
  - (g) evening programs, i.e., skits, movies, campfire stories, etc.,
  - (h) overnight wilderness camping (optional), and
  - (i) other related camping experiences;
- (5) have knowledge of sign-language and/or experience working with deaf and hearing-impaired children; and
- (6) have the ability to operate at a budget not exceeding \$30,000.

**Deadline for Proposals.** Deadline for the submission of proposals for the operation of the outdoor training program is noon, on Monday, January 4, 1982. Proposals received after this deadline cannot be considered for selection. Proposals are to be addressed to Texas Commission for the Deaf, Attention: Art A. Asebedo, coordinator of special services, P.O. Box 12904, Austin, Texas 78711.

**Evaluation Criteria.** Proposals received for the operation of an outdoor training program for deaf students will be evaluated by a screening committee on the following basis:

- (1) submission of proposal on or before the established deadline;
- (2) operation of the program within the monetary limits set;
- (3) submission of proposals as requested by use of format provided;
- (4) program plan;
- (5) ability to provide a sound, high quality recreational and educational program specifically directed to, and suited for deaf and hearing-impaired youngsters; and

(6) camp staffs' knowledge and qualifications in the field of deafness.

**Contact.** Further information and format guidelines for submitting proposals may be obtained by contacting Art A. Asebedo, coordinator of special services, at (512) 475-2492.

**Guideline for Submitting Proposals.** The following format has been developed by the Texas Commission for the Deaf, as a guideline to assist responding facilities submitting proposals for the operation of an outdoor training program for deaf students. This format must be used as outlined to allow the Texas Commission for the Deaf background information on the camp facility, for a selection suitable to the commission's project. Each proposal must include:

- (I) general information including name, location, number of campers able to accommodate, and any additional information deemed appropriate;
- (II) description of activities provided, including social, recreational, educational, etc.;
- (III) personnel (list and describe personnel positions, qualifications, etc.);
- (IV) food and canteen, including types of food, number of times served, snacks, type of canteen or PX on grounds, etc.;
- (V) first aid care and health services (list and describe);
- (VI) housing and facilities, including number of cabins, linens/bedding provided, number of restrooms, washrooms, etc.;
- (VII) budget (list personnel and nonpersonnel expenses chargeable to the project, along with commissary fees, if any, to be charged attending campers);
- (VIII) dates available for program operation (list all two-week periods available through the July-August months);
- (IX) summary of camp program (overall plan for conducting the outdoor training program for deaf students); and
- (X) additional information included to assist in determining selection.

Issued in Austin, Texas, on Monday, November 16, 1981.

Doc. No. 818313      Fred R. Tammen  
Executive Director  
Texas Commission for the Deaf

Filed: November 17, 1981, 1:42 p.m.  
For further information, please call (512) 475-2492.

## 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; and NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to any of the above-stated applications, that person must file a proper re-

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

Orange Memorial Hospital, Orange  
AH79-1109-016A (111281)

AMD/CN—Request to extend the completion deadline in Certificate of Need AH79-1109-016 which authorized the relocation and expansion of the emergency department into the existing physical therapy area, and the construction of a new physical therapy department

McAllen Methodist Hospital, McAllen  
AH80-0613-013A (111281)

AMD/CN—Request to amend Certificate of Need AH80-0613-013 which authorized the City of McAllen and Methodist Hospitals of Dallas to construct, equip, and operate a 444-bed hospital to replace McAllen Methodist Hospital (formerly McAllen General Hospital); (The requested amendments are to permit Methodist Hospitals of Dallas to purchase the land upon which the new facility will be located, to change the location of the site and to increase the project cost to \$72,290,537.)

Issued in Austin, Texas, on November 18, 1981.

Doc. No. 818321 Linda E. Zatopek  
Assistant General Counsel  
Texas Health Facilities Commission

Filed: November 18, 1981, 9:28 a.m.  
For further information, please call (512) 475-6940.

## The University of Texas System Consultant Contract Award

The University of Texas System has awarded a private consultant contract for a vineyard/winery development feasibility study. This study has been filed under the provisions of Texas Civil Statutes, Article 6252-11c, and was published in the June 26, 1981, issue of the *Texas Register* (6 TexReg 2252).

**Description.** The vineyard/winery development feasibility study is divided into two phases. Phase I is an economic feasibility study defining, describing, and/or estimating potential vineyard costs and returns, winery costs and returns, required scale of commercial operations, and market potential. Phase II is a management feasibility study describing the advantages and disadvantages of various strategies for vineyard/winery development and operations including the economic, political, sociological, and cost/benefits for such a development.

**Contractor.** The name and address of the consultant are Booz-Allen & Hamilton, Inc., 1700 One Dallas Centre, Dallas, Texas 75201.

**Contract Value and Period.** Total costs of the contract are not to exceed \$160,000 with Phase I not to exceed \$55,000 and Phase II not to exceed \$105,000. The beginning date of the contract is November 9, 1981, with Phase I to be completed by December 28, 1981, and Phase II to be completed by February 15, 1982.

**Due Dates for Reports.** The due date for documents relating to Phase I of the study is December 31, 1981, and for documents relating to Phase II of the study, March 17, 1982.

Issued in Austin, Texas, on November 16, 1981.

Doc. No. 818271 Arthur H. Dilly  
Executive Secretary, Board of Regents  
The University of Texas System

Filed: November 16, 1981, 1:37 p.m.  
For further information, please call (512) 471-1265.

Each issue of the *Register* includes a conversion table of *Texas Administrative Code* titles affected for that issue. Once a month a guide to agency activity for the previous month is published, as well as a cumulation of TAC titles affected for the previous month. Quarterly and annual indexes to the *Texas Register* are published separately and bound in light blue for distinction.

## TAC Titles Affected in This Issue

The following is a list of the chapters of each title of the *Texas Administrative Code* affected by documents published in this issue of the *Register*. The listings are arranged in the same order as the table of contents of the *Texas Administrative Code*.

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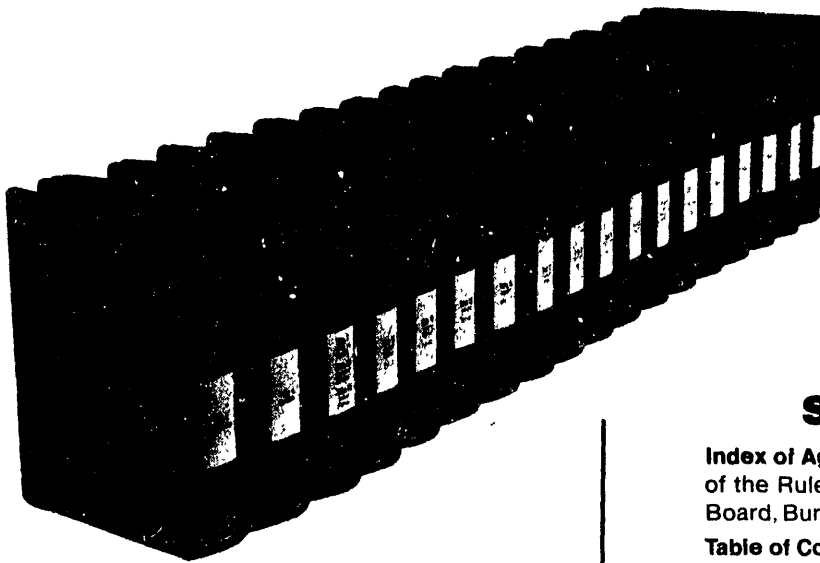
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 TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
 TITLE 43. TRANSPORTATION

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#### Table of Titles

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**Cross References**, showing every Part, Chapter, Subchapter, and Section of the Code cited in a Rule

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For more information please contact:

**In eastern Texas: Gayle Carpenter**  
806-797-4878

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