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Volume 2, Number 98, December 20, 1977  
Pages 4857 - 4958

# TEXAS REGISTER

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TEXAS DOCUMENTS

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Office of the Secretary of State

USPS Publication Number 129090

# NOTES ON THE ISSUE

The Texas Department of Health adopts drinking water standards which meet those required by the U.S. Environmental Protection Agency (EPA). The state is applying for primary enforcement authority, which would result in federal funding, and must have standards at least equal to those of the EPA to qualify. The department's adoptions, however, differ from the federal regulations in the definition of a public water system. While the federal definition is a system with 15 or more connections, the state defines it as a system with four or more. This broader definition brings a larger number of rural water users under the standards than would have the federal rules; at the same time it allows well owners to serve households on either side without having to meet these requirements. This definition is further aimed at recreational property developers who promise state-approved water systems to purchasers but who may be unavailable by the time 15 connections are made and the development falls under the looser definition; the definition of four connections as a public water system makes fulfillment of this promise more immediate.

The Department of Human Resources proposes rules to implement a new computer system that will streamline the application for food stamps, Aid to Families with Dependent Children, and Medicaid, and the processing of these applications. The System for Application, Verification, Eligibility, Referrals, and Reporting (SAVERR) will combine applications for these three programs. Because of the length of these rules, they will appear in the Proposed Rules section of this issue and the next.

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

*Artwork Gary Thornton*

## TEXAS REGISTER



Office of the  
Secretary of State

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## Appointments

### Texas Air Control Board

*For a six-year term to expire September 1, 1983:*

Charles R. Jaynes  
2100 Wooded Acres  
Waco, Texas 76710

Frank H. Lewis  
Box 29  
Bay City, Texas 77414

Jerome Wallace Sorenson, Jr.  
125 Pershing  
College Station, Texas 77840

Mr. Jaynes is being reappointed. Mr. Lewis is replacing E. W. Robinson of Amarillo, Potter County, whose term expired. Mr. Sorenson is replacing Willie Ulich of Lubbock, Lubbock County, whose term expired.

### Texas Closeup Board

*For a term to expire January 31, 1979:*

Milton Stanley  
5813 Sandy Lane  
Pasadena, Texas 77505

*For a term to expire January 31, 1981:*

Billy R. Reagan  
11006 Tupper Lake  
Houston, Texas 77042

J. Gordon Zuber  
1101 Hawthorne  
Houston, Texas 77006

These are being appointed pursuant to House Bill No. 955, 65th Legislature, Regular Session.

Doc No 777142

### Lamar University Board of Regents

*For six-year terms to expire October 4, 1983:*

Thomas M. Maes  
1590 Continental Lane  
Beaumont, Texas 77706

A. H. Montagne  
Box 25  
Orangefield, Texas 77639

Lloyd L. Hayes  
3737 Parklane  
Port Arthur, Texas 77640

The above are being reappointed.

### Texas Motor Vehicle Commission

*For six-year terms to expire September 1, 1983:*

Dan Boone  
303 Greenbelt  
Houston, Texas 77024

Gordon Bailey  
5613 Oakmont Lane  
Fort Worth, Texas 76112

Mr. Boone is being reappointed; Mr. Bailey is replacing W. O. Bankston of Dallas, Dallas County, whose term expired.

### Texas Board of Private Investigators and Private Security Agencies

*For a six-year term to expire January 31, 1979:*

G. William (Bill) Rider  
2 Dansby Drive  
Galveston, Texas 77550

Rider is replacing Judge Joe Connally of Odessa, Ector County, who resigned.

Issued in Austin, Texas, on December 9, 1977.

Doc No 776972      Dolph Briscoe  
Governor of Texas

For further information please call (512) 475-4571



## Opinions

### Summary of Opinion H-1101

Request from Felipe Reyna, District Attorney, McLennan County, Waco, concerning the use of misdemeanor convict laborers.

**Summary of Opinion:** It is not necessary to establish a county workhouse or county farm in order to utilize misdemeanor convict labor upon public improvements of the county under Articles 43.09 and 43.10 of the Code of Criminal Procedure.

Doc No 776939

### Summary of Opinion H-1102

Request from Joe Hubenak, Chairman, Committee on Agriculture and Livestock, Austin, concerning the constitutionality of House Bill 11 in ratifying actions taken to participate in the National Flood Insurance Program.

**Summary of Opinion:** Section 2 of House Bill 11, 65th Legislature, First Called Session, which ratifies past unauthorized actions by political subdivisions with respect to participation in the National Flood Insurance Program, is a valid exercise of legislative authority. It does not violate Article I, Section 16, of the Texas Constitution and destroys any cause of action based on lack of legislative authority for the actions ratified.

Doc No 776971

### Summary of Opinion H-1103

Request from Wm. J. Benardino, County Attorney, Montgomery County, Conroe, concerning the effect of the Texas Education Code, Section 17.95, on the county school board of Montgomery County.

**Summary of Opinion:** Section 17.95 of the Texas Education Code is inapplicable to Montgomery County, which supports county school offices with revenue generated by ad valorem revenue generated under Chapter 18 of the code. After December 31, 1978, other provisions of Chapter 17 of the code will continue to be applicable to Montgomery County as modified by Section 17.94. The salaries of county school officers will thereafter be paid entirely from local funds.

Issued in Austin, Texas, on December 12, 1977.

Doc. No. 777141      C. Robert Heath  
Opinion Committee Chairman  
Attorney General's Office

For further information please call (512) 475-5445

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An agency may adopt emergency rules after determining what it considers to be an imminent peril to the public health, safety, or welfare. These rules are effective immediately on filing with the secretary of state for no more than 120 days, renewable once for no more than 60 days. An agency must submit written reasons, published in the *Register*, for the emergency adoption of rules.

**Numbering System--** Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.

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

## Texas Agricultural Experiment Station

### Pullorum Disease and Fowl Typhoid Program 187.04.00

The Texas Agricultural Experiment Station is renewing the effectiveness of Emergency Rules 187.04.00.001-009. The rules were filed on September 19, 1977, and published in the September 27, 1977, issue of the *Texas Register* (2 TexReg 3635). The rules implement a program to control and eradicate pullorum disease and fowl typhoid in Texas.

The renewal of effectiveness is for the 60-day period of January 18, 1978, through March 18, 1978.

Doc No 776954

## Texas Parks and Wildlife Department

### Wildlife

#### Migratory Game Bird Proclamation No. 34 127.70.02

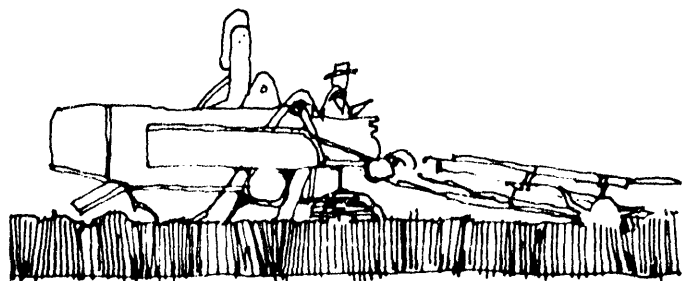
The Texas Parks and Wildlife Department has renewed the effectiveness of Rules 127.70.02.002-.007, as amended. The text of these rules appeared in the September 6, 1977, issue of the *Texas Register*; amendments to the rules appeared in the issues of September 23, 1977, and December 16, 1977.

Issued in Austin, Texas, on December 7, 1977.

Doc No 776826      Maurine Ray  
Administrative Assistant  
Texas Parks and Wildlife  
Department

Effective Date December 28, 1977  
Expiration Date February 26, 1978

For further information please call (512) 475-4875.



# PROPOSED RULES

4864

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, except where a federal statute or regulation requires implementation of a rule on shorter notice.

An agency, on request, shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling considerations urged against the agency's decision.

**Numbering System**-- Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.

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

## Texas Department of Human Resources

The Department of Human Resources is proposing numerous new rules, amendments, and repeals of its rules about food stamps, Aid to Families with Dependent Children (AFDC), and Title XIX Medical Assistance (Medicaid). These amendments result from a new computer processing system called SAVERR (System for Application, Verification, Eligibility, Referrals, and Reporting), which will replace most of the financial services processes currently in use. Those affected by SAVERR procedures will include all AFDC, MAO (medical assistance only), SSI (Supplemental Security Income), and food stamp recipients, as well as department case workers.

SAVERR is a revised eligibility system which, when fully implemented, will reduce errors and enable the department to establish eligibility in a quicker, more efficient manner. When in use, SAVERR will eliminate some paperwork, reduce the use of forms, and provide faster input and update for financial services cases. In the application process, more information will be asked of clients in order to eliminate time-consuming desk reviews that occur when household income is modified by changes in Social Security or other standard incomes. Also, one generic application form will be used in place of separate food stamp and financial assistance applications.

Beginning in January, 1978, the SAVERR system will enter a limited testing stage in San Antonio. Should it prove successful, the department intends to adopt the procedures statewide, effective June, 1978.

The department has determined that these proposed rules, amendments, and repeals will have no fiscal implications for the state or units of local government. The changes revise procedures to make the process more efficient and do not involve policy implications or size of caseload.

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau--601, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

### AFDC

#### Legal Requirements 326.10.21

These new rules, amendments, and repeals are proposed under the authority of Texas Civil Statutes, Article 695c.

##### .002. *Establishing Age*

(c) There may be rare instances *when* [where] no documented birth proof exists for a child. In these situations, the worker reaches an evaluative conclusion after examining all age and relationship evidence available [e.g., school records, Bible records, health records, insurance policies, etc.]. Detailed facts and conclusions reached by the worker are recorded. This is [forwarded to the worker's supervisor] approved by the supervisor and the financial services program director, and made a permanent part of the case record.

(d) Proof of age and relationship is also required for *active case* recipients if not verified at the time of application. The recipient and worker jointly establish a time period in which the recipient is to secure documentary evidence of age and relationship. If the agreed time period exceeds 30 days, or if an extension is necessary, an entry must be made in the case record to justify the delay. If the agreed time period exceeds 30 days, or if an extension is necessary, an entry must be made in the case record to justify the delay. When the recipient fails to provide proof of age and relationship on one or more children within the time period after being notified of this requirement, the child(ren) involved will be removed from the *AFDC case* [rolls]. The stated reason for this action is the same as for applications, failure to furnish information to establish eligibility. The advance notification of right to appeal applies when a child is denied.

##### .003. *Establishing School Attendance*

(a) An otherwise eligible child under the age of 18 may not be denied AFDC regardless of whether he at-



tends school or makes satisfactory grades. All children, 18 to 21 years old, are included in the grant if they are students regularly attending school. A child may be considered a student regularly attending school (including schools for the deaf and blind) if *he or she*:

(1) [He] is enrolled and physically attending [a] full time program of study or training leading to a certificate, diploma, or degree; or

(2) [He] is enrolled and physically attending, at least half time, a program of study or training leading to a certificate, diploma, or degree and is regularly employed or available for and actively seeking part-time employment; or

(3) [He] is enrolled and physically attending, at least half time, a program of study or training leading to a certificate, diploma, or degree and precluded from full-time attendance or part-time employment *because of* [due to] a verified physical handicap.

Doc No 776884

### Deprivation of Parental Support 326.10.28

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

#### .016. *Determining Initial and Continued Incapacity.*

(a) In all cases when incapacity, physical or mental, is the alleged reason for deprivation of parental support, a medical determination of eligibility must be made [by Medical Services Division or the Bureau of Supplemental Security Income (SSI)]. The financial services worker is responsible for all initial determinations and redeterminations of deprivation due to blindness, incapacity, or permanent and total disability of a parent. Other aspects of eligibility [i.e. age, residence, resources, need, etc.] must be established prior to exploration of medical eligibility. If the incapacitated parent is a blind or disabled SSI or *the parent* [he] does not receive SSI or *RSDI* [OASDI], Medical Services determines incapacity from social and medical information submitted by the worker.

(b) The Social Security Administration provides SSI eligibility information regularly to *DHR* [DPW] on the SSA/State Data Exchange System (SDX). SDX contains all current eligibility information for Texas SSI recipients, including the basis for their denial. This information is merged with the *DHR* [DPW] public assistance *computer* [master] files and is available to staff through the regional telecommunication unit. If no information on a disabled or blind parent exists, and the client states he has not filed for SSI or *RSDI* [OASDI], the worker does not authorize a medical examination, but notifies Medical Services. All necessary collateral information is obtained concurrently. If current medical information is available from SSI, it is reported to Medical Services for their coordination with the SSI

Disability Determination Unit since they have agreed to share copies of medical examinations whenever possible. A signed authorization to release medical information is always included to expedite the sharing of medical information. Medical Services also decides the incapacity of aged SSI parents (65 years or over) [since no medical information exists on the PA master file for this group].

(c) Medical Services *reports* [directs] the decision and recommendations to the financial services worker [on a decision form] to be filed in the case record [with the duplicate copy of the socio-economic report]. *Medical Services sends* [They send] the original reports of eye and physical examinations, socioeconomic report, and a copy of the decision form to be filed in the social services case folder, thus alerting the social services worker of the current status of each incapacity case. If Medical Services determines that the recipient is no longer incapacitated and a denial is in order, the financial services worker provides the client with advance notification of his right to appeal prior to the denial.

#### .017. *Examination Procedures.*

(a) Reports from federally supported hospitals [(VA or U.S. Public Health Service)] in or out of Texas are acceptable if they are:

(1) current (within the past 60 days) and applicable to the present alleged condition constituting the basis of disability, and

(2) signed by a physician employed by the federal or state government and licensed to practice medicine in any state in the U.S.

(b) Current, applicable reports from other hospitals must also be signed by a physician licensed to practice medicine in the United States. Likewise, if the parent has been under a physician's care within the past 60 days, the physician may provide copies of his records or a summary from his files indicating diagnosis and prognosis. However, none of this is intended to preclude obtaining any collateral medical evidence that might be used as supplementary data. If the applicant has not been under physician's care or hospitalized prior to making application, he must have a basic physical examination.

(c) After deciding to refer the parent for a medical examination, the worker should, whenever possible, refer the parent to his family physician if the physician is licensed to practice medicine in the United States. If the parent does not have a family physician or if the physician is not licensed to practice medicine in the United States, the parent is allowed to choose a physician licensed to practice in the United States. The worker *explains* [should explain] that no decision can be reached until the examining physician has completed his report. He should urge the parent to cooperate immediately by following through with the examination. An applicant should not be referred to a

specialist for examination, since most specialists will not do a basic physical examination for the fee the department is authorized to pay. Also, in those instances when the applicant's treating physician is a specialist and medical records are not current, the applicant should be cautioned that the specialist may not agree to do a current basic physical examination for the amount of \$25.

(d) The worker prepares and routes the necessary copies of an authorization for a medical examination, an authorization to release medical information, a report of a physical or mental examination, and a self-addressed envelope to the examining physician. The physician records the examination on a report of examination form and *should return* [returns] the report within two weeks. If the physician feels he cannot complete the examination without x-rays or other special studies, the worker *requests* [should request] permission from Medical Services prior to authorizing the physician to proceed. When the worker receives these forms, he is responsible for seeing that the report form is properly completed. If it is necessary to obtain further information or correct erroneous entries, the worker should contact the examining physician and request the correction.

#### .018. *Special Examinations.*

(a) There are occasions when a routine examination procedure is not sufficient to enable Medical Services to make an eligibility decision. In such cases, **Medical Services** [the review team] may find that further specialized examinations are needed, and will authorize such examinations [from the State Office].

#### .019. *Reexaminations.*

(c) The financial services staff has total responsibility for contacting the client preparing necessary forms for a medical examination with the doctor of his choice, and compiling needed social information. The client is always asked whether he has been examined within the past 60 days for SSI or **RSDI** [OASDI]. If he has, this is reported to Medical Services. [It is especially important that the social study report submitted to Medical Services include any statements of the physician regarding diagnosis or prognosis. Often Medical Services is able to render a decision from this information, thus eliminating a reexamination.]

(d) If a parent has been permanently excused from further examination, but the social or financial services worker has observed an improvement in his condition or has evidence that there may be a question regarding incapacity, the following procedure applies:

[(1) The social services worker prepares] A report giving sufficient information to substantiate this claim *is* [and submits it to the financial services worker to be] sent to Medical Services.

[(2) The financial services worker submits a report to Medical Services giving sufficient information to substantiate the claim.]

(f) If the worker learns at the *medical* [interim] or periodic review or through the social services worker that SSI disability has been denied, he reports it to Medical Services, *which* [who] may request submittal of a report of a physical or mental examination or a socio-economic report. The case remains open until Medical Services renders a decision.

(g) The redetermination of physical or mental incapacity as a factor in continuing eligibility must involve the same factors that were considered in determining its existence—psychological, environmental, economic, as well as purely physical. Physical or mental incapacity may be said to exist until SSI disability has been denied or until a medical examination and socio-economic report have established that the parent has sufficiently recovered to be ineligible on *the* [al] basis of incapacity.

(h) However, in instances in which the financial services worker learns that the recipient is working fulltime at gainful employment, it is not necessary to have the recipient reexamined. The fact that he is working fulltime substantiates that he has sufficiently recovered to function adequately in gainful employment. The case is denied [and a memorandum is sent to Medical Services Division explaining the circumstances under which the denial is being made].

#### .021. *Permanent Partial Incapacity.*

(b) Eligibility may be established if a father has a partial incapacity of a permanent nature precluding him from substantial gainful employment during a major portion of the time as evidenced by a significant decrease in income. There must not only be a definite reduction in income compared to previous earning ability, but also compared to other employees in the same employment situation. Employment consistent with physical or mental capabilities is encouraged. Socio-economic handicaps [e.g. limited education, local unemployment situations, language barriers, etc.] must be considered, but do not constitute an incapacity. Substantial gainful employment necessarily has reference to education, experience, training, age, and health. For eligibility purposes, the test of incapacity is whether the applicant is capable of substantial gainful employment and not whether he can find a job in the area of his residence.

(c) If he has a mental or physical incapacity not amenable to treatment or subject to improvement, as evidenced by adequate efforts of treatment, *it is assumed* [we must assume] the incapacity has permanency. There are many degrees of medical and mental incapacities. These must be considered with a thorough socio-economic study to decide eligibility. The concept

of the Medical Services review team is that both the social and medical aspects of a disability receive joint consideration from a doctor and social worker. This is the final decision on incapacity except in cases of appeal.

(e) If upon referral to SSI, a parent is certified for disability, his needs and income must be removed from the AFDC budget and Medical Services must be notified. At the end of the five months waiting period for *RSDI* [OASDI], if the individual has sufficient quarters of Social Security-covered employment to qualify for disability benefits, he is transferred from the SSI program to *RSDI* [OASDI]. At that time, his dependents also receive *RSDI* [OASDI] benefits and this information appears on BENDEX. The worker must then rebudget the case including the disabled parent's needs and income and the *RSDI* [OASDI] benefits available to his dependents.

#### .022. *Aged, Blind, and Disabled Parents.*

(a) A child of a parent qualifying for SSI or *RSDI* [OASDI] benefits due to physical or mental disability or blindness is automatically considered deprived of parental support. However, a child is not automatically considered deprived if one of his parents qualifies for SSI benefits due only to being aged (65 years or older).

#### .023. *Mental Incapacity.*

(a) If the client whose incapacity is being tested on the basis of mental illness is receiving treatment, a report from the treating psychiatrist or treating facility [(out-patient clinic, mental health clinic, etc.)] should be submitted to Medical Services with the socio-economic report.

(b) If the client is not receiving treatment, a report of physical or mental examination, completed by a physician of the client's choice, should accompany the socio-economic report. After reviewing the available material, Medical Services advises the worker if additional information [, such as a psychiatric examination,] is needed.

(c) Eligibility due to mental retardation is based on whether the parent has enough native intelligence to earn a living. [In some cases of mental retardation, Medical Services may not be able to decide based solely on the report of physical or mental examination and the socio-economic report.] If insufficient information is available for the decision, [they may request that] psychometric testing *may* be done for psychological evaluation. [A number of local resources are available for psychological evaluation (e.g. child guidance clinics, bureaus of mental hygiene, psychiatrists and psychologists at state school and institutions, and various faculty members of colleges and universities) on a volunteer basis for a moderate fee. The worker is responsible for exploring with social services staff the possibility of using local resources for psychometric

testing for diagnostic purposes only and notifies Medical Services of the availability of such a resource.] If the worker finds no local resources available, or if the time element involved in *using* [utilizing] these resources would result in a delay in establishing eligibility, [he notifies Medical Services and] a special examination is authorized.

(d) When *Medical Services* [the review team] feels that insufficient information is available to determine incapacity due to psychosis, neurosis, or mental retardation, [a list of approved diagnostic facilities in the area or a list of psychologists certified by the Texas Board of Psychological Examiners is sent to the worker. On receipt of this information,] the worker:

(1) requests the social services worker to supply information if he *or she* has an active case.

(2) makes an appointment for the psychiatric diagnosis or psychological evaluation with the testing source of the applicant's choice [, and]

[(3) immediately notifies Medical Services of the testing source's name and address and the appointment date.]

(e) Medical Services then forwards all current pertinent medical and social information for review prior to the examination and the appropriate authorization and payment form to the examining psychiatrist or psychologist. On receipt of the report, Medical Services notifies the worker of the decision and recommendation [on the decision form] and returns a copy of the decision form and the report of the psychiatrist or psychologist for the social services record.

#### .024. *Hospitals (Other than VA).*

(a) If a parent has been a patient in a state hospital, every effort must be made by the worker to secure a report from the hospital. A letter should be written to the hospital requesting [the completion of a mental hospital record (appropriate for mental hospitals only) and] a medical summary. For patients in mental hospitals, it is necessary to know the date of court commitment [(this usually differs from the date the parent actually entered the hospital)] and the probable date of discharge. For parents discharged from a tuberculosis sanatorium, the worker needs to know the date of admission, length of stay, whether he was discharged or left against medical advice [(AMA)], recommendations for home care, and should request a complete medical summary with a work-tolerance evaluation. [Similar information might be needed for parents who have received care in state schools and veterans' hospitals.]

#### .025. *Veterans Administration.*

(b) [A request form is used to request information from the proper veteran's facility at no expense to the department.] If the veteran is hospitalized, a letter signed by the chief, Social Work Services, may be used as the basic medical document to establish incapacity.

This letter must contain, as minimum information, the diagnosis, estimated duration of the applicant's incapacity for substantial gainful employment, and identity of the source of information [e.g. doctor's name, medical records, etc.] If additional information is needed to establish eligibility, it is requested from the hospital.

(c) If the veteran is not hospitalized, the normal procedure is to procure a basic medical examination through local sources. An authorization to release medical information is submitted to the veteran facility [regional office or hospital] from which the client received the most recent treatment. The information obtained is used to supplement the basic medical examination in reaching an eligibility decision. Occasionally, if the veteran has very recently been released from the hospital, the information from the VA may be sufficient to establish eligibility.

#### 026. Social Security

(a) Copies of medical examinations completed for SSI or **RSDI** [OASDI] eligibility determinations may be obtained by Medical Services. [When notifying Medical Services that the client has been examined for SSI or OASDI disability, the worker must include the following information.]

- (1) name of the individual,
- (2) his Social Security number,
- (3) name of the examining physician,
- (4) approximate date of the examination, and
- (5) An authorization to release medical information signed by the individual *is required*.

#### 027. Failure of Individual to Furnish Requested Medical Evidence

(a) The applicant/recipient must be advised that failure to keep a doctor's appointment will be considered as failure to furnish information. The application or grant will be denied without further contact unless the applicant/recipient notifies the worker that there are extenuating circumstances beyond his or her control [such as the doctor cancelling the appointment, or an emergency happening to the applicant/recipient].

#### 029. Recipients Participating in Vocational Rehabilitation Training

(c) From **DHR's** [DPW's] report of physical and mental examination and socio-economic report, VR medical information and VR consultant's report, Medical Services estimates the anticipated duration of disability. This decision is sent to the financial services worker with a copy for the social services record. [This time lapse aids the social services staff in planning with VR and the client the expected duration of DHR aid.]

(d) Generally, AFDC cannot be continued if physical incapacity does not exist at the beginning of a

specific vocational training plan. In those instances when the parent ceases to meet the definition of incapacity while involved in a specified training program, the grant may be continued until he has completed the program or had reasonable time to do so if Medical Services and **Financial Services** [Assistance Payments] concur.

(e) To request additional time, the financial services worker *sends* [should send] a memo to Medical Services [giving a full report of the:

- (1) joint evaluation by the social and financial services workers,
- (2) training,
- (3) client's attitude and progress, and
- (4) reasons for the needed extension]

(f) A progress report from VR must be sent with this memo. Medical Services Division and Program and Policy Development Division, Financial Services Branch, review this information, decide continued eligibility, and notify the worker, [on a decision form] with a copy for the social services case record. This decision is final.

Doc No 776885

#### Income 326.10.33

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

#### 002. General Principles Governing Determination of Income

(a) To constitute income, a benefit must accrue to the individual on a recurrent basis with some reasonable degree of regularity and predictability. It must be in the form of cash or instruments [interest notes, stocks, bonds, etc.] which are accessible to the individual to spend as he chooses.

(c) Any income to which a person is legally entitled and which is available must be considered. [Examples are unemployment insurance or court ordered child support payments if actually available.] If the applicant or recipient refuses to disclose the amount of income available, no grant can be initiated or continued.

(d) The amount of **RSDI** [OASDI] benefits an individual is entitled to receive is budgeted as income even if the individual chooses not to receive it.

(e) **Monies** [Moneys] or goods received for disposition of capital assets are not considered as income per se, but as capital resources. **Monies** [Money] or goods derived from holding such resources, however, are classified as income. [For example, a recipient has a note of \$1800 from disposition of a resource and receives monthly payments plus interest. Only the interest is considered as income. The note itself is similar to savings account.]

**.005. Quarterly Wage Records.**

(a) [Quarterly wage records are sent by Data Systems to each financial services worker.] The wage records reflect any earnings reported for a recipient during a specific quarter. The worker may in some instances find it necessary to examine the recipient's Social Security card to remove discrepancies [such as unreported name change, transposed Social Security number or the recipient having been assigned more than one Social Security number].

(b) The wage record reflects the name and address of employers, the total amount of earnings for specific quarters and the different names under which earnings have been reported by the employers. [In the event the recipient has been employed by a chain corporation, the address of the employer may possibly be that of a central office rather than the place of recipient's employment.]

(c) Any discrepancies between the wage record and information on the **application** [applicant's statement] form are discussed with the recipient. Cases must be identified in which recoupment procedures are to be initiated or in which fraud may have been perpetrated by failure to report earnings or a change in earnings.

(e) If assistance was being received during a period reflected on the wage record, and the recipient insists that employment did not exist, verification should be secured from the employer(s) shown on the wage record.]

**.009. Cost of Child Care.**

(b) Child care is defined as the actual time devoted to the care and supervision of child(ren). The **amount** [extent] of time **needed for child care** that can be recognized [for child care] is limited to the time required by employment. Only **money spent on** [that portion attributable to] the actual cost of child care may be **deducted** [netted] from earnings. The child care can be provided in the home or some other setting.

(c) When the total cash payments to the provider include wages for services in addition to child care, reasonable prevailing community rates for child care might be helpful in determining the portion allowable. In-kind benefits [e.g., food, shelter, etc.] to the provider cannot be recognized.

(d) No deduction is made for child care when this service is being provided through another program [such as WIN, CETA, VR, etc.].

**.013. Unearned [Fixed] Income.**

(a) Income from the following sources generally falls within the classification of unearned income.

(2) **Retirement** [Old Age], Survivors, and Disability Insurance (**RSDI**) [(OASDI)].

**.014. Benefits, Contributions, and Allotments.**

(c) Consideration is given to all possible sources of pensions and benefits which might be available [(e.g. Railroad Retirement; GI insurance; private insurance annuities; teacher retirement plans; federal, state, city, and county retirement plans; industrial retirement plans; family support payments; etc.)].

**.015. Retirement [Old Age], Survivors, and Disability Insurance (RSDI) [(OASDI)].**

(a) **RSDI** [(OASDI)] is a program providing monthly benefits for workers when they are fully insured, have attained retirement age, and have filed application for retirement benefits. Under certain conditions, wives, divorced wives, husbands, children, widows, widowers, and parents of insured individuals may also be eligible for benefits. In addition, monthly benefits are paid to severely disabled individuals who have sufficient quarters of coverage.

(b) The **investigation** [investigational] process includes efforts to determine if benefits are actually being received, and if so, in what amount; if the individual is entitled to benefits for which he has not applied.

(c) All applicants and members of the dependent group should be requested to apply for **RSDI** [(OASDI)] benefits if the worker finds they are potentially eligible. Reasonable time is granted to process an application for these benefits. An AFDC grant may begin or continue during this interim period, generally not to exceed three months.

(d) If the individual refuses to apply for **RSDI** [(OASDI)] benefits, the amount to which he is entitled must be calculated. The Social Security Administration will make this determination. This amount is budgeted as income even if the individual chooses not to receive it.

**.017. Veterans' Benefits.**

(a) When information submitted reveals that veterans' benefits may be a possible source of income, clarification is secured. Every effort is made to assist the individual in utilizing such benefits. [The following are typical VA benefits.]

(b) A veteran enrolled in school under the GI Bill receives a subsistence allowance. If he has dependents, they too are eligible for an allowance which normally is paid directly to the veteran.

(c) If a veteran, who made an allotment to his dependents while in the service, received an injury that is considered in excess of 50 percent disabling, the dependent is entitled to a payment. This usually is paid directly to the veteran.]

(b)(d) A veteran receiving disability compensation benefits, whose service-connected disability requires that he wear or use a prosthetic or orthopedic appliance, is also eligible for a clothing allowance [of \$150

a year. This clothing allowance meets a special need and is not included as income.

(e) Any veteran who is entitled to an aid and attendance allowance is also eligible to receive all needed drugs and medicines prescribed by a duly licensed doctor or osteopathic physician. If he is not eligible for an aid and attendance allowance, he may be eligible for a housebound award.

(f) A widow who is eligible for a regular VA pension may also receive an additional aid and attendance if in a nursing home or if in need of someone to care for her in her own home.

(g) If following completion of hospital care for a service-connected disability, a veteran is in need of nursing home care, VA can pay for this with no time limitation.

(c)(h) The amount of VA benefits is verified with the veteran or through use of a Request for Information and Authorization to Release Information form.

#### .018. Assistance from Other Agencies.

(c) Supplemental payments are not considered or reported as income when they come within the following criteria:

(1) When items or services [(such as hospital beds, prosthetic appliances, seeing eye dogs, etc.)] are provided which are not included in the department's standard of need

(2) When an amount of money is provided which does not exceed the difference between the grant and the total needs allowance established by the department. [Example: the percentage control factor is applied to a \$100 budgeted need and a payment of \$75 is made. Supplementation of not more than \$25 would not be treated as income.]

(d) Allowances in cash or in kind supplied by an agency primarily engaged in training and rehabilitation [e.g. TRC, Commission for the Blind] are totally exempt provided they are not duplicated by **DHR** [DPW]. An agency might provide supplemental payments for both maintenance purposes and training-related expenses. The portion earmarked for special purposes in relation to the individual's training is exempt as income. Any portion of the allowance provided for maintenance purposes must be treated as other income.

#### .019. Court-Ordered Support Payments.

(a) As caretakers are required, as a condition of eligibility, to assign to **DHR** [DPW] all future rights to child support from any other person, these payments will no longer be considered as available income in the budget. However, there may be instances in which the caretaker's needs are removed due to refusal to make such assignments or failure to cooperate in locating absent parents or in establishing paternity. In such cases, the court-ordered support payments or voluntary contributions are left in the budget and applied to the

children's recognizable needs. None is diverted to meet the caretaker's needs. However, with or without the caretaker's consent, a referral to the child support unit will be made and, if the absent parent can be located, he or she will be contacted and arrangements made to make payments directly to the department on behalf of the children. At the time this transfer is accomplished, the AFDC worker will be notified and the support payments removed from the budget and no longer considered as income, just as in any other case. A protective payee will continue to be applicable. The non-cooperating caretaker's needs will continue to be left out of the AFDC budget until he or she agrees to make an assignment.

#### .020. Property Income

(b) Personal property [e.g. stocks, bonds, notes, savings accounts, mortgages, etc.] is usually income producing at no expense to the individual.

#### .022. Excess Value of Food Stamps.

(a) Individuals who participate in the Food Stamp Program **receive** [use assistance payments and other income to purchase stamps. The value of the stamps in excess of the amount paid is called] "bonus coupons." These bonus coupons are to increase food consumption without increasing food costs. They are disregarded as income and do not affect eligibility for AFDC.

#### .025. Disregard of School-Related Expenses from Unearned Income

(a) Any benefit received by an 18 to 21 year old student [such as OASDI Veteran's benefit from a deceased or disabled parent, Railroad Retirement, or any other type of benefit] which is continued past the 18th birthday only because of school attendance, must be netted by any school-related expenses which the student has. Such expenses will be projected over the next year and prorated by 12 to determine the amount to be netted monthly. This projection will be based on the best information available to the student as to what his anticipated expenses will be. Any adjustments necessary will be made when the case is next reviewed or when the student reports a change. The amount of income remaining, if any, will be considered in the budget.

#### .026. Foster Care Payments

(a) Foster care payments are made to reimburse the foster parents for the bare maintenance expenses of a foster care child. Therefore, foster care payments for children in an individual's own home (which is currently licensed as a foster home by **DHR** [DPW] or licensed child-placing agency) are disregarded as income **in the AFDC grant**.

### Budgeting Process 326.10.34

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

#### .003. *Budgeting Principles When Caretaker's Needs Are Deleted.*

(a) [When it is necessary to remove a caretaker with earned income from the budget due to refusal to participate in WIN, the amount of his or her earnings equal to the needs allowance for a needy parent is diverted to meet his or her needs. A deduction of work related expenses and the cost of child care actually paid are allowed. The special AFDC earned income disregard of the first \$30 and one-third of the remainder of the earnings is not allowed. If the caretaker has a legal obligation to support the children, the balance of the earnings and income of the caretaker is applied to the children's recognizable needs.

(b) When a caretaker is removed *because of* [due to] refusal to [make an assignment to the state of all child support from any other person, failure to] cooperate *with some phase of the WIN or Child Support Programs* [in establishing paternity, or to assist in locating an absent parent], child support may continue to [be received by] the family *until* [pending] arrangements *are made* [with the absent parent] to transfer the payments to the department. In such cases, all the support payments will be considered *against* [in] the *certified* children's *needs* [grant] and *not* [none] diverted to the caretaker *whose needs have* [who has] been *removed even though* [deleted]. If the caretaker has earnings or other kinds of income, the needs allowance for a needy parent will still be diverted from that amount to meet the caretaker's needs before being applied to the children's needs as in the WIN budget. There will be a protective payee *is* appointed [but it will still be considered that] the legal parent has a duty to continue support *of* [for] the children from *his or her* income *and* [as well as] child support payments [received]. In some *cases* [instances], the removal of the caretaker's needs from the budget *can* [could] result in a denial.

(b) [(c)] At the time arrangements *are* [can be] made with the absent parent to make support payments directly to the department, *these* [support] payments will no longer be considered in the budget as income.

(c) [(d)] The overall principle, when there is a payee only, for any reason, is that only the payee's earnings or other income [(i.e., her OASDI, stepfather's income, joint contributions to her and the children, etc.)] may be diverted to meet recognizable needs. Any income belonging only to the children will not be diverted to meet the payee's needs.

#### .005. *Household Members Not Eligible to Be Included in the Certified Group.*

(a) The following household members are not eligible to be included in the certified group.

(8) *Anyone* [Payees] who *has* [have] been removed as *a caretaker because of* [caretakers due to] refusal to register for or participate in WIN.

(9) *Anyone* [Payees] who *has* [have] been removed as *a caretaker because of* [caretakers due to] refusal to make an assignment of child support rights or to cooperate in establishing paternity or in locating absent parents.

#### .007. *AFDC Households Including an SSI Recipient*

(d) If payments [(OASDI, veterans' benefits, child support payments)] are being received for several children, one of whom is certified for SSI, the sum is prorated. Only the portion accruing to the certified AFDC children is counted against the AFDC budget.

(e) When an active AFDC recipient (money grant or MAO) is certified for SSI, notification should be sent to the AFDC worker by the SSI representative. Immediately the case must be *rebudgeted* [budgeted]. The Social Security Administration is notified of the last month in which the individual is included in the AFDC grant.

(f) If the *steps outlined above* [action] *have* [has] not [been] taken *place, and the department is notified by the SDX System that an individual certified for AFDC is eligible for SSI, the following steps are taken* [, the AFDC worker will be notified by State Office when information from SSI reflects that this individual has been added to Medicaid rolls as an SSI recipient and Medicaid coverage is not under a newly issued individual case number. The case record is then checked immediately to ensure that the needs of this person were deleted from the budget. The AFDC eligibility worker notifies the appropriate SSA office. If overlapping payments do occur, SSI will recover the overpayment. Therefore recoupment by DPW is not to be initiated.].

(1) *SSI Medicaid coverage is automatically placed in suspense status to prevent the payment of duplicate Medicaid premiums. The client will continue to receive SSI checks.*

(2) *The worker determines if the AFDC recipient should be denied. If overlapping payments have occurred, SSA will be responsible for recovering the overpayment. Recoupment by DHR will not be initiated in such cases.*

(3) *If the SSI case is still open, the denial of the AFDC recipient will automatically remove the suspense status from the SSI Medicaid coverage.*

(4) *If the AFDC recipient should not be denied, SSI Medicaid coverage will remain in suspense until either the SSI or AFDC recipient is denied.*

## .008. *Stepparent Situation [Situations].*

(a) The basic premise in the stepparent policy is that the husband has a legal obligation and responsibility for his wife's support; the wife has a duty to support the husband when he cannot support himself due to incapacity; and both are responsible for the support of any child(ren) born of [to] their marriage. However, the department recognizes there are situations where this support is not possible. The following policies and procedures are used in computing stepparent budgets.

(b) When either parent is incapacitated and:

(4) There are mutual children who are deprived of parental support *because of* [due to] incapacity. The stepchildren are technically deprived. The case is treated as a non-stepparent case.

(c) The difference between the one child non-caretaker recognizable needs allowance *and the two-member caretaker recognizable needs allowance* is used to determine if a parent is needy.

Doc No 776887

## Overpayments 326.10.36

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

### .004. *Overpayments Resulting from Suspected Fraud.*

(b) [Specialized workers are used whenever the overpayment involves suspected fraud.] Specialized workers should have a good knowledge of all aspects of the food stamp and medical programs as well as of the AFDC program. The specialized worker will be trained in the techniques used by the investigative unit.

### .016. *Recoupment Following Denial.*

(a) When a grant is denied while recoupment is in process, the recipient is notified by Notification Letter. The worker refers the case to the specialized worker who will attempt to establish a plan of restitution for the balance due. When a payment is received, the specialized worker will submit the payment to the Fiscal [Accounting] Division [so the recipient is given credit for the payment].

### .017. *Suspension and discontinuation of Recoupment.*

(b) *If recoupment is suspended, the recoupment information will be retained for 24 months*, if the caretaker *is returned* [returns] to the *grant* [home and is recertified] within 24 months of the *suspension* [effective date of discontinuance of recoupment, the worker must submit input forms to manually reactivate the] recoupment *is reactivated* [procedure].

(c) *Supervisory* [If recoupment is discontinued,] approval *is required in all situations* [of the supervisor must be secured and recorded in the case record].

## .019. *Restitution of Overpayment.*

(b) The following procedures are used:

(1) Secure a cashier's check or money order *in whole dollar amounts* made payable to the *Texas* [State] Department of *Human Resources* [Public Welfare].

(c) [The Fiscal Accounting Division checks the material for accuracy. If the information submitted is correct, a notation is made on the Recoupment of Overpayments Form that the payment has been received.

(d) [Only a cashier's check or money order made payable to the State Department of Public Welfare is acceptable.] AFDC warrants cannot be accepted as payment towards recoupment.

Doc No 776888

## Medical Assistance 326.10.41

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c

### .002. *Verification of 1972 RSDI [OASDI] Benefits*

(a) When an application for AFDC related Type Program 03 assistance is received, the financial eligibility worker must verify the amount of the 20 percent *RSDI* [OASDI] benefit increase received in October, 1972, as well as verify that the applicant was a public assistance money grant recipient in August, 1972.

(b) If available, use the old case records to verify this information. If information cannot be obtained in the region, send a memorandum to Data Control Section, Program and Policy Development Division, Financial Services Branch, State Office. Identify the recipient by case name, prior case number in effect in October, 1972, if known, social security claim number, and date of birth of the case name. Request the amount of the 20 percent OASDI increase in October, 1972, and request verification of a public assistance money grant in August, 1972, to this recipient.]

Doc No 776889

## Medical Effective Date Determination 326.10.42.001

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

### .001. *Determination.*

(b) In addition, in certain situations, the following medical effective dates apply:

(3) The date the determination is made that a foster care child is eligible and has been placed in an approved foster care arrangement. The child is considered to be in foster care during a medical facility stay if:



(D) The plan is later confirmed by placing the child in the home. Exception to confirmation of the plan by subsequent placement of the child in the specified foster home may be made if unforeseen circumstances arise precluding such placement [e.g. change in court order or death of the child while in the medical facility]. ***If the child was also active in an AFDC case in the month he entered foster care, the medical effective date for the foster care case will be the first day of the month the child is not active in the AFDC case.***

(c) The department may receive notification by several means [e.g., personal contact, telephone call, correspondence, medical facility referral form, etc.]. If verbal notification is received, the worker must document the contact on the applicant's statement form.

(d) [The application date is used to determine the time period considered for three months prior medical eligibility.] The medical effective date cannot precede the [medical effective indicator] date ***of application*** by more than three months.

Doc No 776890

### Title XIX Eligibility for Three Months Prior to Application 326.10.43

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

#### 001 Determination

(a) As part of the application for AFDC financial and medical assistance, eligibility for Medicaid coverage is determined for the three months prior to the month in which application was made. Eligibility may begin as early as the first day of the third month prior to the month of application if the applicant was eligible any time during that month. An applicant need not be eligible for a current grant to be eligible for Title XIX coverage for the prior months. ***A separate application must be completed when applying for three months prior medical assistance.***

Doc No 776891

### Four Months Post Medicaid Coverage 326.10.44

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

#### 001 Eligibility

(a) Eligibility for Title XIX Medicaid coverage continues for four calendar months for AFDC and AFDC Foster Care (Type Program 08) certified recipients who become ineligible for assistance because of increased income from employment, provided the following conditions are met:

(1) The denial was because of increased gross earnings from employment [for example, increased hours of employment, accepting new employment, or an increase in salary at the present employment].

(3) The increased income from employment was from a member of the certified group or any family member whose earnings were considered in the grant [for example, a mother who is payee only but whose income is considered in the grant].

Doc No 776892

### WIN Referral 326.10.52

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

#### 003 Determining Validity of Claims of Exemptions.

(a) In order for an individual to qualify for one of the exemptions, the exempt status must be substantiated and documented. [This is usually done on the eligibility determination form.] In some instances, a third party may be required to further substantiate a claim for exemption. The individual must be informed that it is his responsibility to report any change affecting the exempt status within three days of the change. The following individuals may be exempt from WIN registration:

(2) A person who is ill, incapacitated, or of advanced age. Advanced age means age 65 or over.

(D) Individuals who claim exemption from WIN registration based upon incapacity must be referred to the [DPW] VR program, Texas Rehabilitation Commission (TRC), or Texas Commission for the Blind (TCB), as appropriate. It is mandatory that the referral be made on a WIN referral to Vocational Rehabilitation form. Medical records must be attached. A copy of the referral form in the case record suffices as verification that the referral has been made. An individual who volunteers for registration although he qualifies for exempt status because of incapacity may be referred to the [DPW] VR program, TRC, or TCB, as appropriate [by means of the DPW VR referral form].

(G) A medical examination may be requested by the team and authorized by the SAU for registrants who have already been determined appropriate for participation in WIN, but there now is some question of physical or mental limitations which would preclude him from participating in a specific type of employment. [An example might be that in addition to other needed services, the registrant requires some remedial medical service (for example, a hernia operation) to enable him to participate in a particular job.] In such an instance, the client remains registered for WIN services while being referred for vocational rehabilitation services. No request for de-registration is made.

Doc No 776893

## WIN Registration 326.10.53

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

### .006 *Refusal to Participate Without Good Cause (Mandatory)*

(a) *If the person accepts the 60-day counseling period, his needs remain in the budget, but the SAU assists in securing a protective payee to be appointed during the 60-day period if the person is a caretaker.*

(b)(a) If the person does not accept counseling or refuses to participate during or after the 60-day counseling period and has been de-registered, the financial services worker:

(1) Informs the individual that a *protective* [third party] payee is required if he is a caretaker. The final decision as to the selection of the *protective* [third party] payee rests with the SAU. The financial services worker immediately *places the case on hold until a protective payee is found* [requests the State Office to hold the warrant until it can be reissued in the name of the third party payee]

(2) Informs the individual that he cannot re-register for WIN before 90 days.

(3) Removes his needs from the grant.

(c)(b) Only one 60 day counseling period is given. If the individual is again certified for an AFDC grant and refuses a second time to participate in WIN without good cause (TEC determination) and has been de-registered, the financial services worker:

(1) Informs the individual that a *protective* [third party] payee is required if he is a caretaker. The final decision as to the selection of the *protective* [third party] payee rests with the [DPW] social services worker. The financial services worker immediately *places the case on hold until a protective payee is found* [requests the State Office to hold the warrant until it can be reissued in the name of the third party payee]

Doc. No. 776894

## Process 326.10.71.001, .003-.004

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

### 001 *Applicant's Statement Form*

(a) The date of applicant [to be reported as the filing date] is the *day* [date on which] an applicant's statement form is received, *containing* [with] the applicant's signature and *entries in every section that show* [all numbered sections containing some entry showing] the applicant's intent to complete *the form*. In *some* [rare] instances, if it is obvious that *the applicant* [he] has made an effort to complete the form to the

best of his *or her* ability, the application is filed and an appointment set up for the interview even though every section may not be complete.

### .003. *The Application Process.*

(b) [Regardless of the means used by the individual to make known his wish to apply, it is important to ascertain that the application request is not a mere request for information.] When an application form is requested by a person other than the applicant himself, further inquiry is indicated to ensure that the person is a bona fide agent acting in behalf and with the full knowledge and permission of the applicant. [Normally, responsibility for securing this information rests with a clerical person.] It is permissible for a responsible person to apply on behalf of a person who is incapacitated or incompetent.

(c) [When the clerical person has a question as to whether this is a valid request for an application or merely a request for information, or is unable to decide that a person is a bona fide agent, the matter is referred to an eligibility staff person.]

(d) Application materials are available only at the local offices of the department and are not to be made available to the general public, nor otherwise distributed in an indiscriminate manner. They are [to be] reserved for distribution to bona fide prospective applicants.

(d) (e) Each office will assign an intake informational receptionist to provide an in-depth explanation of the requirements to make an assignment of support rights to the state, and to cooperate in locating an absent parent, in establishing paternity, and in obtaining child support.

(e) (f) Explanation of the requirements will be provided whether the application is made in person, by telephone, or letter. If the applicant wishes to file an application for AFDC, applicant's statement form and parent profile questionnaire will be furnished. [Parent profile questionnaire is a questionnaire on the status of an absent, deceased, or incapacitated parent of the children for whom application is made.] If several different parents are involved, a parent profile questionnaire is required for each parent. The applicant will also be informed that non-AFDC parent locator/child support services are available for a fee. If he or she wishes to apply for non-AFDC child support services, a parent profile questionnaire will be provided.

(f) (g) The basic documents made available to prospective applicants include the appropriate informational pamphlet(s), an applicant's statement form, the appropriate number of parent profile questionnaire attachments, a self-addressed stamped envelope and a [form] letter acknowledging the desire to file an application, urging that the applicant's statement form and parent profile questionnaire be completed and returned as soon as possible to file application, and ex-

plaining [to him] that **the applicant** [he] may have assistance in **completing** [executing] the **forms** [form]. **DHR** [DPW] staff can assist in completing the **forms** [form] if the individual is unable to do so and cannot obtain help from another person.

**(g)(h)** **An application** [The date of filing] is not **filed** [entered on the applicant's statement form] until both the statement and questionnaire are completed and returned. If either form is not **complete** [returned or not completed], both attachments are returned for completion. Even though the client may enter "unknown" in an item on the questionnaire it will be acceptable. The date returned and the date of filing must be the same and are entered **into the computer file** at the time the Notice of Application is submitted [to the State Office].

#### .004. *Periodic Review.*

(a) The applicant's statement form alone is used for periodic reviews. The parent profile questionnaire is completed only **if** [on initial application unless] there is a new child by a different parent for whom a questionnaire has not been **previously** completed. A separate assignment must be made for any additional child prior to adding to the certified group.

(b) Redetermination of eligibility will not be considered delinquent **if** [provided] the case is reviewed within a six-month period. However, a complete review for continued AFDC eligibility will be initiated each four months. Any current information on an absent parent [which is] learned during a review **is** [will be] relayed to the child support unit. Each periodic review is a complete review with submittal of an input document based upon a completed applicant's statement form and a face-to-face interview.

(c) **Periodic reviews are begun by sending the client an applicant's statement form and a stamped, self-addressed return envelope. The client has seven work days to return the form.** [In initiating a complete review, a form letter reflecting that a review of the case situation is due and setting a time limit of five days for return of the form is mailed to the recipient along with the applicant's statement form and a self-addressed stamped envelope.]

(d) The work planning report is the principal document for identifying cases due for review.]

**(d)(e)** Reviews are required when a change in circumstances comes to the attention of the department, such as change in income or resources, death of a spouse, the addition or removal of a child, or other change in family composition.

**(e)(f)** Local controls must be set up to identify those recipients to whom an applicant's statement form has been mailed for a review but who have not executed and returned it.] If no response is received within seven work days after the form was mailed, a Notification Letter is sent advising the recipient of denial and of his

right to request a hearing. If no response is received within 10 days, it is considered that **the recipient** [he] is no longer interested in receiving assistance and the case is denied without further contact.

**(f)(g)** If the recipient has permanently moved to another part of the state, the case record is transferred. If he is temporarily visiting outside the state and his exact address is known, an applicant's statement form is mailed to him. If it is learned that his move from the state is permanent, he is denied. When there is a question regarding the temporary nature of a visit, the welfare agency in the other state is contacted to verify the recipient's intent.

**(g)(h)** If information is obtained that conclusively establishes that **a recipient** [he] has come into possession of resources which affect eligibility, then a denial of the case is made without further contact. A notification letter is **sent** [directed] to the recipient at his last known address.

Doc No 776895

#### Process 326.10.71.006

This repeal is proposed under the authority of Texas Civil Statutes, Article 695c.

.006. *Special Review (Incomplete Review).* A special review is one made between periodic reviews because of a change in circumstances which may or may not necessitate a complete review based upon an applicant's statement form. This change may be reported by the client, or the worker may learn of it through some other source. A special or incomplete review usually involves only one area which affects eligibility or amount of grant. An applicant's statement form is not required, but the clearance record should reflect the change and the date.

Doc No 776896

#### Receipt of Client-Completed Forms 326.10.72.002-.003

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

.002. *Procedure for Effective Date of Money Grant Certification.*

(b) Although an application is not delinquent until 45 days from the date of application, financial assistance must begin no later than 30 days from the receipt of the applicant's signed, dated and completed application form if the applicant met all eligibility requirements on that date. If a decision is not reached within 30 days, and this results in the loss of a warrant

to which the applicant is entitled [authorization for], retroactive [supplemental] payment must be **authorized** [submitted].

*.003. Retroactive Warrants for Supplemental Payment Required.*

(a) **Whenever** [In instances in which] an application is cleared in less than 30 days, an applicant is entitled to a warrant for the month in which eligibility is actually established.

(b) [As] Financial assistance must begin no later than the date of certification or 30 days from receipt of the applicant's statement form, whichever is earlier. [The use of] An authorization form for retroactive [or supplemental] benefits is required to authorize a retroactive warrant for the first month for which eligibility was established. This applies in all situations in which an application becomes delinquent due to the time required to clear all factors of eligibility.

Doc No 776897

**Receipt of Client-Completed Forms**  
326.10.72.004-.006

These new rules are proposed under the authority of Texas Civil Statutes, Article 695c.

*.004. Transaction Definitions.*

(a) Complete review. A complete eligibility determination; a documented decision to approve, deny, or sustain eligibility. The prerequisites of a complete review are receipt of a client-completed application form, a face-to-face interview with the client, review of all eligibility factors, and completion of a budget worksheet. Denials made because an application or review form is received but the client fails to keep the appointment is considered a complete review. Denials based on obvious eligibility criteria are also considered complete reviews.

(b) Incomplete review. An incomplete eligibility review; a documented decision to sustain, alter, or deny benefits on an active case. A client-completed application form would not be required and all eligibility factors would not be reviewed. Termination of continuing eligibility because the client fails to return the review form is an incomplete review. Incomplete reviews are also those that examine eligibility and actions taken because of a change in circumstances.

*.005. Case Number*

(a) A case represents a collection of people who are receiving benefits under one case name. Each case is identified by a program specific case number. This number is used in the system to locate information related to the specific case.

(b) The first time an individual is certified for any department services, a unique client number is auto-

matically assigned by the computer. Once assigned, the number must be used by all program areas. The client's number is used in the system to locate identification information, certain types of income, Medicaid coverage, and the numbers for all cases in which the client appears.

*.006. Client Information.* When a client is certified for assistance, the following information about that individual is retained in the department's computer files:

(a) Identification data: client number, client name, birthdate, sex, race, Social Security account number, Social Security claim number.

(e) Income data: gross earned income, RSDI, VA, SSI.

Doc No 776898

**Case Management 326.10.81**

This amendment is proposed under the authority of Texas Civil Statutes, Article 695c.

*.001. Caseload Coverage for AFDC Caseloads.*

(a) For performance evaluations, a worker's/technician's caseload coverage is considered standard if he or she has no more than one percent delinquent reviews or five percent delinquent applications, excluding unborn child and incapacity applications. Percentage of delinquency will be determined according to reports utilized by Administrative Management.

Doc No 776899

**Correspondence 326.10.85**

This repeal is proposed under the authority of Texas Civil Statutes, Article 695c.

*.007. Correspondence with Interested Citizens.* Frequently, the first time an applicant or recipient makes known any dissatisfaction or question concerning the handling of his case by the local staff is through a letter to some public official or other interested citizen. Such a letter is an understandable effort on the part of the client to receive further consideration. When an interested citizen refers such a letter to the department, it should be regarded as an opportunity to give the individual an understanding of the functions and limitations of the Department of Public Welfare. Goodwill and understanding can be built by letters of appreciation to citizens who are interested in clients' welfare and who will help interpret department programs in the community.

Doc No 776900

## Handling of Assistance Warrants

326.10.86.003, .005-.006, .009-.010,  
.014-.015, .022-.023

These amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

### *.003. Endorsement of AFDC Warrants After the Death or Departure of the Designated Relative [Payee].*

(a) If the AFDC [payee] designated relative dies **or leaves** before endorsing a warrant [on behalf of the children] **and there is no new payee, the worker determines if the AFDC case was eligible on the first of the month** [the warrant is cancelled and another may be issued to the person determined by the worker to be responsible for the care of the children as indicated below. An authorization to reissue the warrant is made]. **If the case was eligible, the worker requests that the warrant be reissued to the person determined responsible for the care of the child(re..) for the month in which the designated relative died or left. The AFDC case will be terminated effective the first of the month following the month in which the designated relative died or left.**

### *.005. New Designated Relative.*

(a) If **there are unendorsed warrants and** another qualified **designated relative** [payee] is available, [then] the case name **is** [must be] changed to **that** [the name] of the new **designated relative** [payee]. **Any warrants being held may be reissued in the new designated relative's name.** [A disposition form must be submitted to the Fiscal Division authorizing them to reissue warrants in the name of the new payee for the interim period, if any. The issue of retroactive warrants may be authorized for up to 12 months.] **A maximum of** the current and 11 preceding month's **warrants can be reissued.** [The issuance of such warrants can be made only when the children were in need during the period covered by the warrants and when the children are the same children for whom the grant was previously approved. Retroactive payments may not be issued for children who have not previously been approved and who were not certified under the previous payee's name.]

(b) A caretaker who was not alive and included in the grant certified to the state comptroller on the first of the month for which the warrant is being reissued **may** [can] not be included in the warrants issued "for the interim." [The new payee is included for the month in which the input document is processed.]

### *.006. Death of AFDC Child.*

(a) The [payee] designated relative may cash the warrant for the month in which the death of the child occurred, even though the warrant is not received by

the designated relative until after the death of the child.

### *.009. Temporary Change of Address--Visiting Out-of-State.*

(b) A recipient is responsible for requesting a temporary change of address **because of** [due to] his absence from the state. Likewise, he is responsible for giving information as to his purpose, plans, the date of departure and the date he plans to return.

(d) If the worker is not contacted by the recipient prior to his departure but learns from some other source of the recipient's absence, the worker will attempt to secure his out-of-state address. [Information regarding an out-of-state address may be obtained from relatives, neighbors, friends, etc.]

(f) Request for out-of-state visiting cannot be authorized for more than a three-month period at one time. At the end of the specified time, warrants will be mailed to the old address within the state, unless in the meantime **an input document is submitted extending authorization to mail benefits to the temporary address** [another temporary change of address form, or a denial or termination has been processed in the State Office].

(h) A recipient leaving the state with no declared intention to return (and the absence of any overt acts [such as leaving family or household effects within the state] that would create a presumption of intent to return) **is considered** [shall be deemed] to have moved from the state and his grant is denied immediately. If subsequently the recipient returns to the state and declares his intention to remain in Texas, assistance may be regranted if other eligibility requirements are met.

### *.010. Visiting Within the State.*

(a) When a recipient desires to visit at another address within the state for a period of three months or less, the worker submits the **input document with the required temporary address entries** [and specifies which warrants should be mailed to the temporary address].

### *.014. Placing a Case on Hold [Held Warrants].*

(a) **When a case is placed on hold, benefits will not be mailed until the hold is released. Workers may authorize that a case be placed on hold when** [The only warrants which can be held (not mailed) are]:

(1) [Those where] The recipient cannot be located [(address unknown)]. **When a worker determines the client's address is unknown, the case is placed on hold. If the recipient is not located in a reasonable length of time, the case is denied. The worker's investigation must be completed in 90 days from the first of the month in which the address became unknown.**

(2) [Those in which the] Appointment of a guardian is pending.

(3) *A new payee is needed.*

(4) *The appointment of a protective* [Those in which the designated relative is being changed and the designation of a new] payee is pending.

(5) *When a case is denied or transferred to Type Program 07 (four months post) and the 10-day hold period expires after cut-off and prior to the first of next month.*

[(b) In these three instances the warrants are being held for the recipient, and it is only a question of where to mail the warrant or to whom it should be mailed. In no other instance may the worker request that warrants be held.

[(c) The worker will continue efforts to locate the recipient to obtain a guardian, or to obtain a new payee so that the warrants may be released as soon as possible.]

*.015. Disposition [Release] of Held Warrants.*

(a) *When three or fewer warrants are held, the benefits will be disposed of in one of the following ways:* [Unable to locate. Warrants held because the recipient cannot be located will be released to the recipient by the Fiscal Division upon receipt of a permanent change of address giving the new address of the recipient or stating that the recipient has returned to his "old" address, unless in the course of the investigation current ineligibility is discovered and such ineligibility was in existence during the period covered by any warrant on hand. In this instance, a denial will be made and the cancellation of warrants on hand for any periods that the recipient may have been ineligible is authorized. The worker makes every effort to locate the recipient upon learning that the recipient's address is not known to the department. If the recipient is not located within a reasonable length of time the case is denied. In no event may the investigation period extend beyond 90 days from the first of the month in which the recipient's address became unknown.]

(1) *If the original reason for holding benefits is no longer valid and the benefits should be released as originally printed, the benefits on hand will be released to the same person and address as originally intended.*

(2) *If the requirements needed to release the hold are met, the benefits will be released or reissued to the new guardian, payee, or address, as appropriate.*

(3) *If the hold needs to be released, but the benefits on hand need special handling, a form will be used to instruct Fiscal Division how to dispose of the warrant(s) on hand.*

[(b) Guardianship pending. Warrants held pending the appointment of a guardian will be released to the guardian by the Fiscal Division when a guardian

has been obtained and the Letters of Guardianship have been approved by the Legal Division unless current ineligibility is discovered and such ineligibility was in existence during the period covered by any warrant on hand. In this instance, a denial is made accompanied by a form to the Fiscal Division authorizing the cancellation of warrants on hand for periods that the recipient may have been ineligible.

[(c) Change in payee. A maximum of 12 warrants held pending a change in an AFDC designated relative (payee) may be reissued and released upon receipt of a disposition of unendorsed warrants form after an input document changing the case to the name of the new payee has been processed.

[(d) In rare situations when four or more warrants have been held and are to be released, the worker must prepare a memorandum explaining the facts of the situation to be forwarded to the program director, with a copy to the supervisor, for his or her approval and signature.]

*.022. Remittance to State Office.*

(a) Remittances or refunds are made payable to the *Texas* [State] Department of *Human Resources* [Public Welfare] by cashier's check or money order and mailed to the Fiscal Division accompanied by a memorandum containing identifying information and the facts in the case.

*.023. Authorization of Retroactive or Supplemental Payments for Cases Deprived of Warrants Due to Administrative Errors or Omissions.*

(a) Retroactive or supplemental payments may be issued in those instances in which *current* [applicants for] or *past* recipients of public assistance have been deprived of warrants or received amounts less than entitled to, and the following conditions exist:

(1) There is no dispute as to facts or application of policy; and

(2) the client and the worker are in complete agreement on the amount of retroactive or supplemental payment.

Doc No 776901

326.10.86.004, .007, .012-.013, .016

These repeals are proposed under the authority of Texas Civil Statutes, Article 695c.

*.004. No New Designated Relative.* If there is no one who can qualify as a new designated relative, the worker requests that the warrant be reissued to a person determined by the worker to be responsible for the care of the child(ren) for the month in which the designated relative died. The AFDC case is terminated effective the first of the month following the month in which

the payee died if there is no new payee and other arrangements are being made for the children.

.007. *Change in Designated Relative for Reason Other than Death.* If there are warrants on hand not endorsed by the payee while serving as designated relative and it is necessary to make a change in payee for reason other than death, then warrants may be issued to the new payee for those months for which warrants were not endorsed, not to exceed the current month and the 11 months immediately preceding.

.012. *Undelivered Warrant.* When a warrant is not deliverable to the recipient at the address indicated, it is returned by the post office to the State Office. The Fiscal Division notifies the worker that the warrant is on hand and of the action to be taken. No subsequent warrants can be mailed until appropriate disposition has been made of the warrant on hand.

.013. *Undelivered Warrant--Reason Other than Death.*

(a) When it is learned from Fiscal Division that the current warrant has not been delivered, the worker makes an investigation and submits a permanent change of address that will be checked against warrants on hand in the Fiscal Division. If in the investigation it is learned that the recipient was ineligible for the month for which the warrant was issued, the grant should be denied, and the warrant be cancelled because ineligibility existed throughout the month. If the recipient was eligible for any portion of the month, the warrant on hand will be mailed.

(b) If it is learned that the old address is correct and the warrant was returned through error, the worker notifies the Fiscal Division requesting release to the same address.

(c) If the change of address is not received in the State Office until warrants for one or more subsequent months have been written, all warrants on hand in the State Office will be mailed to the new address.

.016. *Cancelled Warrants.* An input document denying a grant must be accompanied by a request for special handling showing the date the recipient became ineligible before the Fiscal Division may cancel any warrant on hand.

Doc No 776902

## Refugee Assistance Program

### Background of Refugee Assistance Programs 326.13.10

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau--600, Department of Human

Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

The following amendments are proposed under the authority of Texas Civil Statutes, Article 695c.

.001. *Cuban Refugee Program.*

(a) On February 3, 1961, the president, by proclamation, directed the Department of Health, Education, and Welfare to develop an emergency program to meet the needs of Cuban refugees. This program is administered by the *Texas* Department of *Human Resources* [Public Welfare] and financed by 100 percent federal funds.

.003. *Vietnamese, Laotian, and Cambodian Refugee Program.*

(a) On April 8, 1975, the president designated Vietnamese, *Laotians*, and Cambodians to be refugees under the Indochina Migration and Refugee Assistance Act of 1975. Under the authority of this act, the Department of Health, Education, and Welfare provides reimbursement to the state on a 100 percent basis for financial assistance, medical assistance, social services, and child welfare services provided eligible Vietnamese, *Laotian*, and Cambodian refugees.

(b) The Congressional intent is that the program is to be a temporary one. *Limited funds have been appropriated* in anticipation that most of the families and individuals will not need welfare as they will be sponsored and become self-sufficient. The financial and medical assistance programs are intended for those refugees who are not resettled with a sponsor by one of the national voluntary agencies or a state or local government who will have arranged the sponsorship and for those refugees in need because their sponsor is unable to continue providing for all of the needs of the refugee family.

Doc No 776903

### Certification Process 326.13.12

The following amendment is proposed under the authority of Texas Civil Statutes, Article 695c.

.001. *Certification for Financial and Medical Assistance.*

(a) When a Cambodian, Cuban, *Laotian*, or Vietnamese refugee applies for assistance, a face-to-face interview is held. At this interview, the Forms 1-94 for each family member (or Cuban Refugee Card) are examined and pertinent data recorded. Each Vietnamese, *Laotian*, or Cambodian adult and child is supposed to have been assigned an Alien Registration Number and a Social Security Account Number at the Resettlement Center which is his *or her* point of entry into the United States. Each Cuban refugee family is assigned a

Central File Number at the Cuban Refugee Emergency Center in Miami, Florida. If a refugee claims that a Form 1-94 was not issued to him *or her* or alleges that the Form 1-94 is lost, the worker will accept an application. However, the application cannot be processed until the refugee obtains a Form 1-94 from INS.

(i) Claims for medical services are identified at the top "Cuban Refugee" or "Vietnamese, *Laotian*, or Cambodian Refugee" and submitted through the usual department claim procedures.

Doc. No. 776904

### Educational Grants 326.13.13

The following amendment is proposed under the authority of Texas Civil Statutes, Article 695c.

#### *001 Educational Grants to Vietnamese and Cambodian Refugees*

(a) Any refugees in a family assistance unit receiving assistance under the refugee program, who are granted a Basic Opportunity Education Grant or a Guaranteed Student Loan, may remain a recipient in the grant and the loan or grant benefits will be totally disregarded in determining the amount of the assistance payment.

Doc. No. 776905

### SSI Recipients 326.13.14

The following repeal is proposed under the authority of Texas Civil Statutes, Article 695c.

#### *001 Vietnamese and Cambodian Refugees*

(a) The Social Security Administration is developing a system to identify refugee cases both through the manual certification procedure and the State Data Exchange (SDX) System. Once the identification system is initiated, no medical care identification card or explanation of benefits (EOB) will be generated for such individuals. They will be manually issued a monthly medical care identification card by the Refugee Program Specialist.

(b) For refugees certified under the SSI program, department staff will verify eligibility for medical assistance to providers by checking with the nearest DPW computer terminal.

Doc. No. 776906

### Repatriated, Destitute, and Sick Nationals 326.13.16

The following amendment is proposed under the authority of Texas Civil Statutes, Article 695c.

#### *.001 Temporary Assistance.*

(c) The *Texas* Department of *Human Resources* [Public Welfare] administers the Repatriate Program within this state.

(e) The department is responsible for developing a plan with relatives, the person, and dependents who return, and social agencies for reception and resettlement; and, in carrying out the plan, for providing transportation, financial assistance, medical care and hospitalization, and social services for adults and unaccompanied children as needed. It may be necessary to perform such activities as the following in carrying out these responsibilities:

(2) Meet the returning persons and dependents at the port of entry and help them to meet problems aggravated or induced by illness, and to develop resources for their own care and maintenance [such as Old Age, Survivors, and Disability Insurance (OASDI) and SSI benefits and liquidation of appropriate assets].

Doc. No. 776907

### Food Stamps 326.15

#### Notice of Proposed Rulemaking

The Texas Department of Human Resources is proposing new rules regarding Food Stamps, while simultaneously proposing the repeal of existing rules in the rule chapter. Because of the length of the text, the rules will be published serially. The proposed adoption date for all the rules will be January 20, 1978, 30 days after publication of this issue.

The rules may be inspected in the offices of the Texas Register Division, Room 503, Sam Houston Building, Austin, and at the Texas Department of Human Resources, John H. Reagan Building, Austin.

Following is a list of the new rules proposed, including subchapter titles, rule code numbers, and docket numbers.

Responsibilities  
326.15.12.001-.002, .006-.008, .016,  
.018-.019

Doc. No. 776908

Food Stamp Program Violations  
326.15.14.003

Doc. No. 776909

Department Personnel Conduct  
326.15.17.001

Doc. No. 776910

Applications by Department Employees  
326.15.22.001

Doc. No. 776911



**Authorized Representatives**

326.15.28.005

Doc. No. 776912

**Residency**

326.15.31.001-.002

Doc. No. 776913

**Verification of Income**

326.15.42.003

Doc. No. 776914

**Certification Periods**

326.15.63.003

Doc. No. 776915

**Notice of Adverse Action**

326.15.65.002

Doc. No. 776916

**Fair Hearings**

326.15.71.001-.002

Doc. No. 776917

**Food Coupon Overissuance and Recovery**

326.15.76.001, .014, .022

Doc. No. 776918

**Emergency Food Stamp Assistance in Disasters**

326.15.77.007, .009

Doc. No. 776919

**Transfers**

326.15.81.001, .003

Doc. No. 776920

**ATP System**

326.15.92.015

Doc. No. 776921

**ATP System--Failure to Participate**

326.15.92.016

Doc. No. 776922

**Medicaid Eligibility 326.25****Notice of Proposed Rulemaking**

The Texas Department of Human Resources is proposing new Medicaid Eligibility rules, while simultaneously proposing the repeal of existing rules in the rule chapter. Because of the length of the text, the rules will be published serially. The proposed adoption date for all the rules will be January 20, 1978, 30 days after publication of this issue.

The rules may be inspected in the offices of the Texas Register Division, Room 503, Sam Houston Building, Austin, and at the Texas Department of Human Resources, John H. Reagan Building, Austin.

Following is a list of the new rules proposed, including subchapter titles, rule code numbers, and docket numbers.

**General Information**

326.25.10.001

Doc. No. 776923

**Eligible Recipients for Title XIX (Medicaid)**

326.25.21.001

Doc. No. 776924

**Individuals for Whom SSI Eligibility Criteria Are Used**

326.25.31.001

Doc. No. 776925

**Resources for Individuals Related to the SSI Program**

326.25.33.016

Doc. No. 776926

**Budgeting for Individuals Related to the SSI Program**

326.25.35.008, .011

Doc. No. 776927

**Income for Individuals Related to the SSI Program**

326.25.34.014

Doc. No. 776928

**Legal Requirements for Type Program 02**

326.25.41.015

Doc. No. 776929

**Needs Allowance for Type Program 02**

326.25.42.001

Doc. No. 776930

**Income for Type Program 02**

326.25.44.008, .011-.012

Doc. No. 776931

**Applications for Medicaid**

326.25.52.001-.002, .004-.006

Doc. No. 776932



Procedures for Applications for Medical Assistance  
326.25.53.002-.003, .007, .011  
Doc. No. 776933

Procedures for Application for Medical Assistance  
326.25.53.013-.014  
Doc. No. 776934

Vendor Payments in Title XIX Long-Term Care  
Facilities  
326.25.55.011  
Doc. No. 776935

Intra-State Requests for Assistance  
326.25.56.001-.002, .007  
Doc. No. 776936

Intra-State Requests for Assistance  
326.25.56.009-.010  
Doc. No. 776937

Issued in Austin, Texas, on December 9, 1977.

Jerome Chapman  
Commissioner  
Texas Department of Human  
Resources

Proposed Date of Adoption: January 20, 1978

For further information, please call (512) 475-4601

## State Board of Podiatry Examiners

### Examinations 396.15.00

The Texas State Board of Podiatry Examiners proposes Rules 396.15.00.001-.014, establishing procedures on applications for the examination to qualify for a license to practice podiatry, the taking of the examination, and the conduct of the examination by the board.

These rules are being proposed so that individuals who wish to practice podiatry in this state may know the information which must be supplied to the board, the general content of and procedures applicable to the examination, and the methods used by the board in preparing and conducting the examination.

There are no fiscal implications of these proposed rules since the procedures established by these proposed rules are currently being followed by the board. No source other than the members of the board has been consulted in determining that the proposed rules have no fiscal implications.

Public comment on these proposed rules is invited. Persons should submit their comments to Joe C. Littrell, Secretary-Treasurer, State Board of Podiatry Examiners, 2204 Washington Avenue, Waco, Texas 76702. Comments will be accepted until January 11, 1978.

These rules are proposed under the authority of Texas Civil Statutes, Articles 4569, 4570, and 6252-13a.

#### .001. Definitions

(a) "Board" means the Texas State Board of Podiatry Examiners.

(b) "Board member" means one of the appointed members of the decision-making body defined as the board.

(c) "President" means the president of the State Board of Podiatry Examiners.

(d) "Secretary-treasurer" means the secretary-treasurer of the State Board of Podiatry Examiners.

(e) "Applicant" means an individual who applies to take the examination given by the board.

(f) "Examinee" means an individual who has been admitted to take the examination.

#### .002. Application for License

(a) All individuals who wish to practice podiatry in this state, who are not otherwise licensed under law, must successfully pass an examination given by the board.

(b) Individuals who seek to take such examination shall submit a written application, on a form provided by the board, to the secretary-treasurer. The information contained in the application shall be verified by affidavit of the applicant.

(c) Applications for examination must be printed in ink or typewritten on the board form, which will be furnished by the secretary-treasurer upon request.

(d) The completed application, required supporting materials, and examination fee must be received by the secretary-treasurer not later than 60 days before the first day of the examination. Under extenuating circumstances, the materials supporting the application, such as podiatry college transcripts of recent graduates, may be received by the secretary-treasurer, at his discretion, later than 60 days before the examination.

(e) The filing of an application and tendering the fee to the secretary-treasurer shall not in any way obligate the board to admit the applicant to examination until such application has been approved by the board as meeting the statutory requirements for admission to the examination for licensure.

(f) The full examination fee is \$40. Only certified check, post office money order, or express money order shall be accepted. No examination fee will be refunded. The examination fee must be received by the secretary-treasurer with the completed application.

#### .003. Qualifications of Applicants

(a) All applicants shall have attained the age of 21 years, be of good moral character, and free from all contagious and communicable diseases, verified by a certificate of health to that effect.

(b) All applicants shall have completed the number of college courses required by Texas Civil Statutes, Article 4570(b)(6), and graduated from a reputable school of podiatry.

(c) The applicant shall submit evidence sufficient for the secretary-treasurer to determine that the applicant has met all the requirements of this rule and any other information reasonably required by the board.

#### 004 Qualifications of Examinees

(a) An applicant, to be eligible to take the examination given by the board, must not only meet the requirements of Rule 003, above, but must also be prepared to demonstrate to the secretary-treasurer and the board that such applicant is not disqualified from taking the examination for any of the reasons set forth in Texas Civil Statutes, Article 4570(d)(1) through (15).

(b) If the secretary-treasurer or any board member has sufficient reason to believe that an applicant does not meet the requirements of Texas Civil Statutes, Article 4570, then the secretary-treasurer or such board member may request the president to call a hearing to determine whether the applicant is qualified to take the examination.

(c) The full board or one or more board members appointed by the president may conduct such hearing, as provided by procedural Rule 396.30.00.007(b).

005 *Approved Podiatry Schools and Colleges in the United States*. The board shall annually approve those podiatry schools in the United States whose graduates are eligible for examination or licensure under the provisions of Texas Civil Statutes, Article 4570.

#### 006 Time, Place, and Scope of Examinations

(a) Examinations for licensure shall be conducted in the English language and given twice each year, generally in January and June at a place designated by the board. A schedule of each examination session will be furnished each examinee at the beginning of the examination.

(b) The examination shall consist of two sections, written and practical. The written portion of the examination covers a period of approximately one and one-half days. The practical examination covers approximately one-half hour.

(c) Examinees shall not be permitted to bring medical books, notes, medical journals, or other help into the examination room, nor to communicate by word or sign with another examinee while an examination is in progress without permission of the presiding examiner and within the hearing of a designated representative of the board, nor shall the examinee leave the examination room except when so permitted by the presiding examiner, and accompanied by a member or an employee of the board.

(d) A license shall not be issued to any person who has been detected in a deceptive or fraudulent act

while an examination is in progress. One designated representative of the board shall be in the examination room at all times while an examination is in progress.

#### 007 Written Examination

(a) The subjects the examinee shall be examined in on the written portion of the examination are anatomy, chemistry, dermatology, materia-medica, pathology, physiology, bacteriology, orthopedics, diagnosis, and podiatry, limited in their application to ailments of the human foot.

(b) The examinee will also be examined on the laws and board rules governing the practice of podiatry in Texas.

(c) The type of questions will be true-false, multiple-choice, and essay. Certain times are assigned to each subject for completion.

#### 008 Practical and Oral Examination

(a) The subjects the examinee shall be examined in on the practical portion of the examination are diagnosis, surgery, biomechanics, emergencies, and patient care and treatment.

(b) The practical portion of the examination is conducted orally, with the examinee responding to questions posed by one or more board members and appointed assistants sitting as an examination panel.

#### 009 Grade Requirements

(a) An examinee, in order to become licensed, must make a grade of not less than 60 in any subject given and a general average of 75 in all subjects given.

(b) Each board member shall determine the credit to be given on the answers to the subjects in which examined by that board member, with final review and approval of the board. The discretion of the board on the examinations is final.

#### 010 Reexaminations

(a) All examinees who fail to satisfactorily pass an examination shall be entitled to one reexamination without payment of an additional examination fee, provided the reexamination is taken within 18 months after date of original examination.

(b) All reexaminations shall be in all subjects, both written and practical, and a reexaminee must satisfactorily pass such examination in all subjects, regardless of the grades made by such reexaminee in the original examination.

#### 011 Preparation of Questions

(a) At the end of each examination session, the president shall assign each board member the responsibility of preparing questions in one or more of the required subject areas for the next examination.

(b) The board member who prepares the questions in the required subjects, if still a member of the board at the next examination, shall grade the answers to those questions during the next examination.

(c) The assignment of subject areas to board members may be rotated among the board members, at the discretion of the president.

#### 012 Assistance with Examinations

(a) Where many applicants seek to take the examination and this would cause the examination session to exceed a reasonable length of time, the board may have licensed podiatrists assist the board in conducting the practical portion of the examination.

(b) Any podiatrist who assists the board in examinations shall be licensed in this state and have at least five years of active podiatry practice. If possible, such assistants will be past members of the board.

(c) When assistants are used, the majority of the panel or panels which gives the practical portion of the examination shall be board members.

(d) Only board members may decide whether an examinee passes or fails.

013. *Notification of Grades* Within 60 days from the date of the examination, the secretary-treasurer shall notify each examinee the grade made in each subject and the general average made on the examination and whether the examinee passes or fails.

#### 014. Disqualification to Take Examination

(a) Applicants who wish to take the examination, but who may be disqualified for reasons set out in Texas Civil Statutes, Article 4570, shall be entitled to a hearing held in accordance with board procedural Rules 396.30.

(b) Hearings involving few issues on whether an applicant is qualified to take the examination will be held by the full board just prior to the examination.

(c) Hearings involving extensive evidence on whether an applicant is qualified to take the examination will be held as soon as possible after the secretary-treasurer receives the application. This type of hearing will be conducted by the board or a hearing officer, as defined by Rule 396.30.00.001(c).

(d) If the hearing is held immediately preceding the examination, the board, if possible, will determine whether the applicant is eligible to take the examination before the examination begins. However, if the hearing is not completed by the time the examination is scheduled to begin, the board may recess such hearing and in such cases, the applicant or other applicants who have not had a hearing will be allowed to take the examination. However, the examination grades of all such applicants will not be disclosed to the applicants until after their eligibility to take the examination is finally determined.

(e) Any applicant who is refused admittance to an examination has the right to appeal such decision in

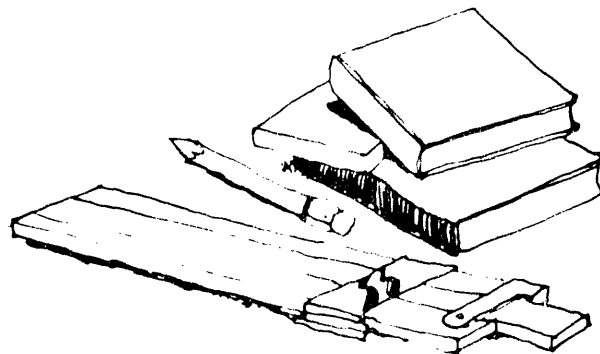
accordance with the board procedural Rules 396.30 and Texas Civil Statutes, Articles 4570 and 6252-13a.

Issued in Waco, Texas, on December 13, 1977.

Doc No 777004 Joe C. Littrell, D.P.M.  
Secretary-Treasurer  
State Board of Podiatry  
Examiners

Proposed Date of Adoption: January 21, 1978

For further information please call (512) 476-6331



## Texas Department of Water Resources

The Texas Water Development Board proposes new permanent rules. Pursuant to Senate Bill 1139 of the 65th Legislature, effective September 1, 1977, the Texas Water Development Board is directed to make any rules necessary to carry out the powers and duties under the Water Code and other statutes to establish and approve all general policy of the Texas Department of Water Resources. On September 1, 1977, the board adopted these proposed rules as emergency rules and approved their submission as proposed permanent rules.

The general counsel of the department has determined that the proposed rules will have no fiscal impact to the state or units of local government. No local units of government have been consulted in this estimate. However, these rules are essentially the same as pre-September 1, 1977, rules covering these areas, with alternations primarily addressing organizational changes caused by Senate Bill 1139.

Public comment on the proposal is invited and may be submitted by telephoning Bruce Bigelow at (512)

475-7836, or by writing to the General Counsel, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, prior to January 1, 1978.

Because of the length of these rules, only the chapter and subchapter titles and numbers and a brief description will be published. Copies may be obtained from the department at the above address or may be examined at the Office of the Texas Register, 503 Sam Houston Building, Austin.

These rules are proposed under the authority of the Texas Water Code, Sections 5.131 and 5.132.

## Introductory Provisions

### 156.01.01.001-.014

In addition to routine matters, this subchapter includes (1) provision for the board delegation of authority to an attorney of the department to hear and to make a written report to the board on any matter before the board, (2) a description of department policy concerning public access to records of the department and procedure for obtaining copies thereof, and (3) designation of the executive director to perform all nonjudicial functions of the department relating to the federal government arising from appointment or designation of the Texas Water Rights Commission, the Texas Water Quality Board, or the Texas Water Development Board by the governor prior to September 1, 1977.

## Environmental Impacts Statements

### 156.01.05.001-.006

This subchapter concerns the general subject and use of environmental impact statements, and in addition to environmental considerations, includes social and economic impacts. Provision is made that such statements may be required and used as evidence in hearings before the board or the commission. The subchapter also requires such statements to be filed if the federal government prepares or requires one to be prepared.

## Definitions 156.01.10.001-.046

This subchapter concerns definitions of a general nature that are used throughout the entire rules. The definitions include terms applicable to water development, quality, and rights matters. Definitions which are unique to specific chapters are included with that specific chapter rather than with the general definitions.

## Rulemaking Public Hearings of the Board and Commission 156.01.15.001-.011

This subchapter concerns rulemaking public hearings of the board and commission. The Administrative Procedure Act provides that under certain circumstances

public hearings may be called to consider proposed rules, and the public may petition for the adoption of a rule as the agency may adopt emergency rules. The subchapter includes rules on the procedure and practice to be applied to public hearings to be held on rules.

## Guidelines on the Preparation of Environmental, Social, and Economic Impact Statements 156.01.20.001-.003

This subchapter states the steps to be followed in the assessment process and the matters which should be included in a statement.

## Appropriation of Water

### Classes of Water Rights Permits

#### 156.02.05.001-.008

In addition to routine matters, this subchapter includes descriptions of the various classes of water rights permits: regular, seasonal, temporary, term, contractual, Section 11.143, storage, and emergency.

### Types of Water Rights Permits

#### 156.02.10.001-.004

This subchapter includes descriptions of the various types of water rights permits: direct diversion and diversion from a reservoir, on-channel and off-channel storage.

### General Requirements of Permit Applications

#### 156.02.15.001-.017

In addition to procedural requirements, this subchapter includes a list of general informational requirements for water permit applications: source of supply, amount and purpose of use, rate and method of diversion, location of diversion point, reservoir, and dam, return water and surplus water, proposed installation of reservoir on land of another, multiple ownership of existing reservoir, source of supply in another's reservoir, storage in another's reservoir, transwatershed transfers, provision of storage facilities, limited terms for permits in the Brazos River Basin.

### Maps, Plats, and Drawing Accompanying Applications for Regular

#### Water Permit 156.02.20.001-.003

This subchapter includes a list of physical requirements for application plans submitted by the applicant's registered professional engineer or public surveyor and a list of content requirements for accompanying maps.

### **Additional Requirements for Irrigations**

**156.02.25.001-.003**

This subchapter includes a list of additional requirements for irrigation permits involving descriptions of the lands proposed to be irrigated.

### **Additional Requirements for Dams and**

**Reservoirs 156.02.30.001-.002**

This subchapter includes a list of additional requirements for proposed dams and reservoirs involving the submission and contents of plans, maps, and plats prepared by registered professional engineers.

### **Diversion from Un-sponsored or Storage**

**Limited Projects 156.02.35.001-.003**

This subchapter describes the different procedures for obtaining a permit to divert state water for beneficial purposes from either a reservoir constructed by the federal government for which no local sponsor has been designated and permit issued or a reservoir permitted for storage solely for the purpose of optimum development of the projects.

### **Temporary Water Permits**

**156.02.40.001-.003**

This subchapter includes a description of procedures concerning temporary water permits not exceeding three years duration: additional application requirements; staff review and provisional disposition by individual commissioners; complaint procedures and provisional cancellation; hearing before the commission; and time extensions.

### **Application for Water Permit under Section**

**11.143, 156.02.45.001-.003**

This subchapter includes a description of the procedural and informational requirements for obtaining an emergency permit for a period of not more than 30 days to alleviate conditions which threaten the public health, safety, and welfare, and which override the necessity to comply with established statutory procedures.

### **Contractual Water Permit**

**156.02.50.001-.003**

This subchapter includes a description of the abbreviated procedural and informational requirements for obtaining a permit to use state water impounded in a domestic and livestock reservoir of less than 200 acre-foot capacity constructed on a nonnavigable stream for other than domestic and livestock purpose.

### **Emergency Water Permit 156.02.55.001-.002**

This subchapter includes a description of the procedural and informational requirements by which a purchaser of raw water must make application for a permit based upon a contractual arrangement with a supplier possessed of a valid water right.

### **Water Permit Fees 156.02.60.001-.010**

This subchapter describes the fees which must be collected by the executive director before any action is taken by the commission on the matter relating thereto: filing, recording and use fees and postage. This subchapter also prescribes procedures for installment payment of fees exceeding \$1000 and for return of unexpended or excess fees if an application is denied or granted in part.

### **Issuance and Conditions of a Water Permit**

**156.02.70.001-.005**

This subchapter provides the following: (1) that all permits are issued subject to prior and superior water rights; (2) that the commission shall incorporate in every permit any condition, restriction, limitation, or other provision necessary for the enforcement and administration of the water laws and board rules; (3) that permittee's acceptance of the permit is an acknowledgement and agreement to abide by the permit's terms, conditions, limitations, and restrictions; (4) that all return and surplus water must be returned to the source of supply and not reused or sold for reuse unless authorized in the permit; and (5) that suppliers of state water for irrigation purposes must charge purchasers on a volumetric basis.

### **Additional Provisions**

#### **Filing of Instruments 156.03.01.001-.002**

This subchapter states the criteria for filing water permit applications.

#### **Reports 156.03.05.001-.004**

This subchapter describes the reports which must be filed by various classes of water right holders and water districts and requires permittees to file statements with the executive director showing that construction or installation of diversion and distribution facilities has commenced and been completed within the time limit specified in the permit.

#### **Change of Address and Ownership**

**156.03.10.001-.003**

This subchapter requires a water right holder to notify the executive director of address and ownership changes and to file a written instrument evidencing a

water right ownership transfer with the county clerk and the executive director.

#### Conveying Stored Water 156.03.20.001-.005

This subchapter requires that anyone proposing to use the bed and banks of any stream for the purpose of conveying stored water from a place of permitted storage to a place of permitted use must file with the executive director a certified copy of the purchase contract and a written statement of the intended transit of water. The subchapter also enumerates the duties of the water conveyor and of others along the stream and authorizes the commission to alter or amend any contract for the transportation of water if necessary to protect vested rights or prevent the undue loss of water.

### Particular Proceedings

#### Amending Water Rights on Motion of Executive Director 156.04.01.001-.003

This subchapter concerns the amendment of certain types of water rights by the commission on the motion of the executive director. The special circumstances under which the executive director may seek to have a water right amended are detailed in the rule and include such instances as to correct inadvertent errors, cure ambiguities, provide a means for enforcing terms and conditions of a water right or enforcing applicable law and similar matters. The rules also provide for the procedure to be followed and the types of notice which must be issued.

#### Amending Water Rights 156.04.05.001-.002

This subchapter concerns the amendment of certain types of water rights without notice other than to the holder of the water right. Only amendments which do not contemplate an additional use of state water or an increased rate or period of diversion, and no potential for harming any other existing water right may be considered under this subchapter. Examples of some of the circumstances are stated in .001. The subchapter also includes a provision as to the procedure for applying for such an amendment.

#### Amendments to Water Rights Requiring Mailed and Published Notice 156.04.10.001-.002

Generally, amendments falling under this subchapter may involve an increased appropriation of water, rate of diversion, or in some way may affect another water right. Provision is also included for the procedure to be followed when applying for such an amendment.

### Cancellation of Water Rights

#### 156.04.15.001-.004

This subchapter concerns the cancellation of water rights and the enforcement of terms of water rights. The subchapter also empowers the executive director to enforce water right terms through voluntary compliance, in an action before the commission, or by referring the matter to the attorney general. The subchapter sets forth the procedure the executive director and the commission are to follow, including the notice to be issued.

#### Transwatershed Division 156.04.20.001

This subchapter concerns the movement of water from one river basin to another. It sets forth the procedure to be followed including (1) what type of application to file, (2) the type of notice to be issued and to whom, and (3) the type of hearing to be held.

#### Transwatershed Diversion Time Extensions

#### 156.04.25.001-.003

This subchapter concerns the extension of time to commence or complete work on a project authorized by a water permit. Requirements of an application are detailed, together with the type of notice and amount of fees due.

#### Complaints 156.04.30.001

This subchapter concerns the procedure to be followed when there is an alleged violation of state law relating to water or the rules. The procedures set forth are applicable to both the executive director and a member of the public. Generally, the subchapter provides that the complaint must be served on the alleged violator and a hearing may be held.

#### Condemnation 156.04.35.001

This subchapter concerns the power of condemnation of existing works which may become a public menace or a danger to life and property. The subchapter utilizes the complaint procedure as the means of presenting such a matter.

#### Federal Projects 156.04.40.001

This subchapter concerns federal projects relating to water in Texas.

#### Designation of Local Sponsors on Federal Projects 156.04.45.001

This subchapter concerns the designation of local sponsors on certain projects. When a project is proposed for planning and development by the federal government or the department, any political subdivision may request to be designated the sponsor of the project. The

subchapter describes the procedure to be followed, including the notice which must be given.

## **Requirements for Dams and Reservoirs**

### **General Provisions 156.05.01.001-.003**

This subchapter articulates the department's policy concerning dam safety and emphasizes the importance of protecting the public from the consequences of dam failure by requiring the highest degree of professional engineering performance in the design and construction of a dam.

### **Authority of the Department**

#### **156.05.05.001-.002**

This subchapter includes a statement of the department's authority to supervise the design, construction, enlargement, alteration, repair, maintenance, operation, and removal of all dams and reservoirs, as well as a description of the civil and injunctive remedies for failure to comply with a board rule or commission order concerning the construction, repair, or removal of dams and reservoirs.

### **Commission Approval of Construction**

#### **156.05.10.001-.005**

This subchapter details the requirements for construction plans, specifications, and engineering reports, which must be approved by the commission prior to the construction, enlargement, repair, alteration, or removal of any dam.

### **Inspection and Construction Requirements**

#### **156.05.20.001-.010**

This subchapter details the dam builder's or owner's responsibilities during construction, enlargement, repair, alteration, or removal of a dam. It also authorizes periodic inspections by the executive director, specifies procedures for dealing with noncompliance with approved plans and specifications, and requires written permission from the executive director prior to deliberate impoundment of water in a partially or newly completed structure.

### **Maintenance, Operation, and Removal**

#### **156.05.30.001-.005**

This subchapter vests in the department the right to supervise maintenance and operation of dams and reservoirs insofar as necessary to safeguard life and property from injury by reason of failure. It authorizes the executive director to make periodic field inspections of all dams and reservoirs, and to seek orders from the commission requiring the removal or alteration of unsafe and/or unpermitted dams and reservoirs. The subchapter also requires the dam owner to request and

secure written approval of the executive director prior to commencing the voluntary removal or breaching of a dam.

## **Water Districts**

### **General Provision 156.06.01.001-.003**

This subchapter includes (1) a definition of "governing board;" (2) a requirement to have a district's accounts audited annually; and (3) the form of an affidavit to be filed annually.

### **Creation of Water Districts**

#### **156.06.10.001-.002**

This subchapter includes (1) a description of documents needed and procedure to be followed in the creation of a municipal utility district, and (2) a section on conversion of districts to municipal utility districts.

### **Underground Water Conservation Districts**

#### **156.06.20.001-.003**

This subchapter includes (1) the procedure for designating underground reservoirs, (2) the alteration of boundaries of underground reservoirs, and (3) a discussion of the boundaries of underground water conservation districts.

### **Appointment of Directors 156.06.25.001**

This subchapter includes a description of the procedures for the appointment of temporary directors as well as the form to be used in requesting the appointment of temporary directors.

### **Issuance of Bonds 156.06.30.001-.008**

This subchapter includes (1) a statement to the effect that the executive director has the responsibility for reviewing and the commission for approving engineering projects, (2) a list of documents required to be filed for a bond issue and the form of some of these documents, (3) application requirements for bond issues, (4) a section allowing a petition for lack of prosecution, (5) requirements for construction within a district prior to approval of a bond issue, (6) provision for the developer paying 30 percent of district construction cost, and (7) provision for the developer being reimbursed for interest accrued on approved construction pay estimates.

### **District Action if the Commission Approves the Engineering Project and Issuance of Bonds 156.06.35.001-.008**

This subchapter includes provision for (1) documents to be filed by the district in the event of approval of a bond issue, (2) certain reports to be submitted to the department's Houston office, (3) the preparation of contract documents entered into in connection with water dis-



district construction projects, (4) the governing board of a district having responsibility for control of contracts for construction work, (5) inspection of a district construction project by the executive director at any time, (6) correction of deficiencies noticed in construction of district facilities, and (7) detailed report upon completion of the district project.

#### Other Action Requiring Commission Consideration for Approval 156.06.40.001-.004

This subchapter includes provision for (1) approval of substantial alternations to plans and specifications, (2) district use of surplus bond or related funds, and (3) change in commission-approved bond interest rates or maturity schedules.

#### Reports 156.06.50.001-.002

This subchapter includes provisions for (1) documents and reports required to be filed by districts, and (2) additional reports and information required of certain districts.

#### District Name Signs 156.06.55.001

This subchapter includes provision for the posting notice of the existence of a district

#### Sanitary Sewer Systems 156.06.60.001

This subchapter includes provision for the adoption of rules and regulations for districts providing or proposing to provide sanitary sewer service.

### Financial Programs

#### Introductory Provisions 156.09.01.001-.002

This subchapter includes a statement of the scope of the rules and definition of terms.

#### General Provisions 156.09.05.001-.006

This subchapter includes a detailing of mailing and submission requirements, number of copies required of all general application or petition documents; required engineering data, methods of incorporation by reference in an application; statement of meetings and hearings by the board, fees required, and provisions for the suspension of rules.

#### Policy Declarations 156.09.10.001-.003

This subchapter details the administrative policies of the board, environmental policies of the board; and the policy statement whereby Water Quality Enhancement Funds will not be made available for the benefit of the development of new areas.

#### Initiating Action under the Loan Assistance, Water Facilities Acquisition, and Water Quality Enhancement Programs 156.09.15.001-.003

This subchapter includes an introduction of the three programs administered by the board, and method of designation and functions of the local sponsor in federal projects.

#### Application to the Board 156.09.20.001-.006

This subchapter includes a description of the procedures used to initiate board participation in a project; required general application information; required environmental data, required fiscal data; required engineering feasibility data; and required legal data.

#### Formal Action by the Board 156.09.25.001-.002

This subchapter includes a description of procedures for consideration of the application by the board, including considerations used by the board in passing on applications; and a detailing of the actions that are available to the board on any given application

#### Prerequisites to Release State Funds 156.09.30.001-.004

This subchapter includes a detailed description of engineering design data prerequisites necessary prior to the release of state funds; a description of land and right-of-way acquisition procedures prerequisites; a detailing of the prerequisite of the applicant to obtain appropriate commission permits and resolutions; and a description of the legal and fiscal documents prerequisites required prior to release of state funds.

#### Loan Assistance Program and Water Quality Enhancement, Final Procedures and Requirements 156.09.35.001-.002

This subchapter includes a detailing of the instruments needed for closing and provisions for the escrow of any of foregoing instruments which cannot be filed prior to delivery of the bonds and payment therefor.

#### Construction Phase for Loan Assistance Project and Water Quality Enhancement Project 156.09.40.001-.004

This subchapter includes additional assurance for the stability and security of Development Fund Loans; methods and responsibility for awarding construction contracts; provisions for inspection during construction; and method of alteration for approved plans and specifications.

**Water Facilities Acquisition Program  
Negotiation of Contracts  
156.09.45.001-.003**

This subchapter provides guidelines for a required draft of a master agreement; authority for the executive director to proceed to negotiate and the board approve entry into any other contract(s) necessary to implement the master agreement; and the requirement that all contracts between the board and a federal agency for the acquisition and development of storage facilities and all contracts by the board for the development and operation of recreational facilities be approved by the attorney general.

**Water Facilities Acquisition Program  
Construction Phase 156.09.50.001-.006**

This subchapter provides for the designation of one participating political subdivision to act as manager for the project; responsibility for assuring that proper procedures are observed in advertising for bids and selecting the bidder to construct the project; responsibility and method of providing inspection during construction; method of altering approved plans and specifications; method of disbursement of state funds; and provisions to reopen proceedings where project cost may exceed estimates in the Water Facilities Acquisition Program.

**Procedure for State Acquisition Initiated by  
the Board 156.09.55.001**

This subchapter includes provisions for the board to initiate proceedings for state acquisition.

**Transfer of State-Acquired Facilities and Sale  
of Water 156.09.60.001-.002**

This subchapter provides authority for the board to sell, transfer, or lease any acquired facilities, and to sell the use of any unappropriated public waters of the state stored in the storage facility acquired by the board; and provisions whereby any person acting within his authority may apply to the board to purchase, acquire, or lease facilities, or to purchase the right to use the water in storage, with a preferential right to be recorded to political subdivisions, and as among political subdivisions participating in the project in question.

**Application to Acquire State Interests or to  
Purchase Water 156.09.65.001-.006**

This subchapter includes the requirements of an application by a prospective storage client or water client; notice required upon receipt of an application by a prospective water client or storage client; board consideration of an application by a water client or storage

client; requiring findings of the board to be made prior to selling, transferring, or leasing any acquired facilities, or selling the right to use water therefrom; requirement that a transfer agreement be adopted by the board describing the terms and conditions necessary for the sale, transfer, or lease of a storage facility; and a directive to the executive director to negotiate a transfer agreement with the water client or storage client to effectuate the sale, transfer, or lease of board-owned interest, or the sale of the right to use the water therefrom, and provisions providing guidelines for the negotiation of such an agreement, and the requirement that the attorney general approve, as to legality, all contracts or agreements for the sale, lease, or transfer of acquired storage facilities and for the sale of water impounded in acquired storage facilities

**Post-Construction Responsibilities  
Compliance Procedure  
156.09.70.001-.002**

This subchapter includes a detailing of general responsibilities after completion of the project, including operation and maintenance requirements and continuing financial requirements, and provisions detailing the policy of the board toward continuing cooperative responsibility between the executive director and the local participating political subdivisions

**Levee Improvement Districts and  
Approval of Plans for  
Reclamation Projects**

**Definitions 156.10.01.001**

In addition to routine matters, this subchapter includes definition of terms to be used in Chapter X.

**Administrative Policy of the Board  
156.10.05.001-.002**

In addition to routine matters, this subchapter includes provision for promulgation of legislative policy by Department of Water Resources, and criteria to be used in approving plans for levee improvement projects.

**General Provisions Relating to All Applicants  
156.10.10.001-.003**

This subchapter includes provision for construction of projects without approval of plans and specifications, cooperation with other agencies, and advice to applicants.

**Provisions Relating to Districts  
156.10.15.001-.011**

This subchapter includes provision for investigation of proposed districts by the executive director; report on

proposed district shall not be construed as approval of the project; the commission will approve all plans, before construction of project; the plan of reclamation of the district shall be supervised by the executive director; the district's engineer shall prepare a survey report of the district including maps and profiles, with a copy of the report to be filed with the executive director; approval of the report by the board not being considered approval within the meaning of Sections 16.238, 57.093, and 57.102 of the Texas Water Code; procedure for project approval applications; representatives of the executive director entering any land in connection with a project; inspection and report by the executive director during construction; the filing of information with the board prior to approval of bonds by the attorney general

#### Applications for Approval of Projects Requiring Commission Approval 156.10.20.001-.013

This subchapter includes provision for application for approval of reclamation project, the purpose of preliminary plans, the use of existing information in development of acceptable preliminary plans, adequate additional information required to be submitted, submission of flood data, other requirements of preliminary plans, the executive director requesting additional information pertinent to the proposed project, the plans to bear the seal of the engineer, referral of the application to the commission, publication of notice of application for approval of project plans, disposition of the application, time within which construction must commence, and time within which construction must be completed.

#### Unauthorized Projects and Projects Not Constructed According to Commission Approval 156.10.25.001-.002

This subchapter includes provision for refusing to accept an application for approval of an unauthorized construction of a project, and inspection of a construction and provision for bringing a project into compliance with conditions approved by the commission.

#### Submission of Final Plans 156.10.30.001-.004

This subchapter concerns provision for submission of final plans for approval, normal requirements for final channel excavation plans, normal requirements for final levees or dikes, and final notice to proceed with construction.

## Texas Weather Modification Act

### Definitions 156.11.01.001

This subchapter offers definitions of the rules concerning weather modification promulgated by the Texas Water Development Board.

### Issuance of Licenses and Permits 156.11.05.001-.010

This subchapter sets out the department policy and rules concerning the issuance of licenses and permits.

### Revocation and Suspension of Licenses and Permits 156.11.10.001-.004

This subchapter includes rules concerning revocation and suspension of licenses and permits

### Records Required 156.11.15.001-.002

This subchapter includes rules requiring that certain records be kept concerning weather modification activities

### General Information and Instructions 156.11.20.001-.013

This subchapter includes rules setting out general information and instructions concerning licensing of weather modification activities.

### Hail Suppression Election Provisions 156.11.25.001

This subchapter includes rules pertinent to elections concerning hail suppression activities.

## Rules Relating to the Texas Water Well Drillers Act

### General Provisions 156.12.01.001-.002

The rules promulgated under this subchapter describe the purpose of the rules, and define terms to be used for the entire chapter.

### Certification of Registration Procedures 156.12.05.001-.010

These rules describe requirements to obtain certification as a registered water well driller including exceptions to requirements for certification, administration of examination, qualifying for registration, and obtaining of the certificate of registration both initially and by renewal.

**Well Logs and Completion**

156.12.10.001-.007

This subchapter prescribes requirements for reporting by registered water well drillers of all well logs for water wells drilled within the state and completions of wells producing undesirable water

**Well Plugging 156.12.15.001-.006**

This subchapter prescribes rules for plugging of wells encountering undesirable water, and specific requirements concerning such wells to prevent pollution.

**Miscellaneous Provisions**

156.12.20.001-.002

This subchapter includes miscellaneous rules applicable to alternate procedures for well plugging or completion and procedures for field inspections by the executive director of such wells

**Grants Administration**

**Federal Construction Grant Program**

156.15.05.001-.004

In addition to a general statement about the Federal Construction Grant Program under the Federal Water Pollution Control Act, this subchapter includes provisions for determining eligibility of grant applications, the procedures involved in the processing of applications, priority rating criteria as well as the process for deriving priority scores, and provisions for the review of applications by the Environmental Protection Agency

**Planning Grants, Loans, and Contracts**

156.15.10.001-.009

This subchapter includes definitions specifically related to planning grants, loans, and contracts, provisions for determining eligibility and making application for a planning grant, loan, or contract, a statement of department policy with regard to implementing and administering the planning grant, loan, and contract program authorized in the Texas Water Code, provisions for processing applications and matters to be specified upon board approval, provisions to be contained in the planning agreement with the board, or for any revisions and renegotiation of the agreement

**Particular Proceedings**

**Review and Approval of Plans and**

**Specifications for Disposal**

**Systems 156.16.01.001-.006**

This subchapter includes provisions for the review and approval of plans and specifications for all treatment facilities, disposal systems, or sewer systems for the col-

lection, transportation, treatment, and disposal of defined waste.

**Approved Ratings for Waste Disposal Systems 156.16.05.001-.003**

This subchapter includes a provision for the executive director, subject to the approval of the board, to develop a rating system for waste disposal facilities and to establish procedures for the evaluation of all waste disposal facilities

**Certification Notice for NPDES Permits**

156.16.10.001-.003

This subchapter includes provisions and procedures for public notice for all applications for certification for NPDES Permits

**Design Criteria for Sewage Systems**

**General Provisions 156.17.01.001-.009**

This subchapter provides that the executive director shall be the reviewing authority with regard to plans and specifications for construction projects funded by the Water Quality Enhancement Fund and for projects funded by the Environmental Protection Agency Construction Grants Program that the reviewing authority shall be responsible for approving such plans and specifications, that specified requirements must be met before the plans and specifications can be approved, and that specified requirements must be met during and subsequent to actual construction in accordance with such plans and specifications

**Effluent Standards**

**Domestic Wastewater Treatment**

**Plants 156.18.05.001-.004**

This subchapter specifies a policy relating to effluent standards for domestic wastewater treatment plants.

**General Regulations Incorporated Into Permits**

**Monitoring and Reporting System**

156.19.05.001-.010

This subchapter specifies requirements pursuant to Section 26.042 for monitoring and reporting by holders of waste discharge permits concerning the status of their compliance with permit terms and conditions

**Discharge of Untreated or Partially Treated Wastewater 156.19.10.001-.010**

This subchapter specifies procedures and requirements for making application to discharge untreated or par-

tially treated wastewater into or adjacent to waters in the state and authorizes any discharge which receives approval by the executive director after application is made in accordance with such requirements

#### **Hazardous Metals 156.19.15.001-.009**

This subchapter incorporates limitations concerning certain hazardous metals into all waste discharge permits which do not otherwise specify such limitations

### **Edwards Aquifer**

#### **Bexar County 156.20.01.001-.019**

This subchapter regulates water quality related activities in and around the recharge zone to the Edwards Aquifer in Bexar County, including regulations for the control of private sewage disposal systems, organized waste disposal systems, confined animal feeding operations, and industrial sanitary landfills. These rules also designate local governmental entities to perform administrative functions specified by this subchapter

#### **Comal County 156.20.05.001-.019**

This subchapter regulates water quality related activities in and around the recharge zone to the Edwards Aquifer in Comal County, including regulations for the control of private sewage disposal systems, organized waste disposal systems, confined animal feeding operations, and industrial sanitary landfills. These rules also designate local governmental entities to perform administrative functions specified by this subchapter

#### **Hays County 156.20.10.001-.019**

This subchapter regulates water quality related activities in and around the recharge zone to the Edwards Aquifer in Hays County, including regulations for the control of private sewage disposal systems, organized waste disposal systems, confined animal feeding operations, and industrial sanitary landfills. These rules also designate local governmental entities to perform administrative functions specified by this subchapter

#### **Kendall County 156.20.15.001-.019**

This subchapter regulates water quality related activities in and around the recharge zone to the Edwards Aquifer in Kendall County, including regulations for the control of private sewage disposal systems, organized waste disposal systems, confined animal feeding operations, and industrial sanitary landfills. These rules also designate local governmental entities to perform administrative functions specified by this subchapter

#### **Kinney County 156.20.20.001-.010**

This subchapter regulates water quality related activities in and around the Recharge Zone to the Edwards Aquifer in Kinney County, including regulations for the control of private sewage disposal systems, organized waste disposal systems, confined animal feeding operations, and industrial sanitary landfills. These rules also designate local governmental entities to perform administrative functions specified by this subchapter

#### **Medina County 156.20.25.001-.019**

This subchapter regulates water quality related activities in and around the Recharge Zone to the Edwards Aquifer in Medina County, including regulations for the control of private sewage disposal systems, organized waste disposal systems, confined animal feeding operations, and industrial sanitary landfills. These rules also designate local governmental entities to perform administrative functions specified by this subchapter

#### **Uvalde County 156.20.30.001-.010**

This subchapter regulates water quality related activities in and around the Recharge Zone to the Edwards Aquifer in Uvalde County, including regulations for the control of private sewage disposal systems, organized waste disposal systems, confined animal feeding operations, and industrial sanitary landfills. These rules also designate local governmental entities to perform administrative functions specified by this subchapter

### **Area Water Quality Management**

#### **Clear Lake 156.21.05.001-.003**

This subchapter describes department policy concerning waste discharges within the Clear Lake Watershed.

### **Industrial Solid Waste**

#### **Industrial Solid Waste Management 156.22.01.001-.024**

This subchapter includes (1) permitting requirements for activities regarding commercial industrial solid waste disposal, (2) application procedures applicable to such permitting, (3) a manifest and reporting system applicable to certain categories of industrial solid waste, and (4) general rules applicable to industrial waste handling, collection, or disposal

## **Boat Regulations**

### **Boat Sewage Disposal 156.23.05.001-.020**

This subchapter relates to the collection and disposal of sewage from boats, as defined, by (1) prohibiting certain discharges, (2) requiring marine sanitation devices on certain boats, (3) providing specifications for approved marine sanitation devices, (4) providing authority to certify certain boats, for evidence of such certification and fees for such certification, (5) providing authorized means of discharging from boats, (6) providing authority to certify pump-out facilities and specifications for said facilities, (7) providing for fees for certifying pump out facilities and evidence of such certification, (8) providing for discharge of sewage from a pump out facility, providing certain exclusions, (9) providing for renewal certification and fees for the same, (10) authorizing expenditure of funds, (11) authorizing certain persons to undertake enforcement and file complaints, (12) providing for permission to make enforcement inspections, (13) providing for cancellation of certification, and (14) providing penalties for violation

## **Control of Certain Discharges by Rules**

### **Commercial Swine Production Operation 156.24.05.001-.010**

This subchapter regulates waste handling and disposal practices for commercial swine production operations pursuant to Section 26.040

### **Meat Processing 156.24.10.001-.007**

This subchapter regulates the disposal of the waste from meat processing operations pursuant to Section 26.040

### **Sand and Gravel Washing 156.24.15.001-.006**

This subchapter regulates waste handling and treatment practices associated with sand and gravel operations pursuant to Section 26.040

## **Waste Discharge Permits**

### **General Provisions 156.25.01.001-.006**

This subchapter sets forth general policy concerning the department's regulation of waste disposal activities.

### **Procedure for Obtaining Waste Discharge Permits 156.25.05.001-.016**

This subchapter sets forth department policy concerning applications for and issuance of waste discharge permits.

### **Revocation, Suspension, and Amendment of Waste Discharge Permits 156.25.10.001-.006**

This subchapter sets forth department policy concerning revocation, suspension, and amendment of waste discharge permits

### **Corrections and Transfers of Waste Discharge Permits 156.25.15.001-.002**

This subchapter sets forth department policy concerning corrections and transfers of waste discharge permits

### **Renewals 156.25.20.001-.004**

This subchapter sets forth department policy concerning renewals of waste discharge permits

### **Emergency Orders 156.25.25.001-.005**

This subchapter sets forth department policy concerning issuance of temporary orders pursuant to Section 26.0191

### **Enforcement 156.25.30.001-.003**

This subchapter authorizes the institution of administrative and judicial proceedings to enforce and require compliance with applicable provisions of the Texas Water Code and with the rules, orders, and permits of the department

## **Oil and Hazardous Substances**

### **General Provisions 156.26.01.001**

This subchapter adopts Emergency Rule 156.26.01.001, which defines hazardous substances for the purpose of the Texas Oil and Hazardous Substances Spill Prevention and Control Act

## **Operation of Rio Grande**

### **Introductory Provisions 156.30.01.001**

This subchapter provides that in the case of any conflict with regularly applicable rules, regulations, or orders promulgated or issued by the board, Chapters 30, 31, and 32 govern the operation of the Rio Grande in Texas.

### **Definitions 156.30.05.001-.017**

This subchapter contains definitions of terms relevant to operation of the Rio Grande Basin, including the Lower, Middle, and Upper portions

### **Watermaster—Regulatory Functions 156.30.10.001-.002**

This subchapter describes the responsibilities of the watermaster, which include inventory, record keeping

and monthly reporting of water use. It also indicates the responsibilities of diverters, such as installing metering and pump-locking devices and submitting reports of diversions.

#### Allocation of Waters 156.30.15.001-.002

This subchapter provides that for the purpose of allocating water from Falcon and Amistad Reservoirs, the two are combined into a single unit from which allocations will be made, based upon water rights in the Lower Rio Grande recognized by the court and upon water rights in the Upper Rio Grande recognized in the Preliminary Determination of water rights and the claims under contest in good standing to the extent water was asserted in the Section 11.307 claims. It also contains details as to the amounts of reserve water for domestic and municipal use and for losses of water, emergency requirements and adjustment. In addition, it provides information about the allotments for the uses of water in the Lower and Middle Rio Grande and the allotment calculations for engineering and accounting purposes.

#### Enforcement of Rules 156.30.20.001

This subchapter describes the actions by diverters which are violations and provides that after referral by the watermaster, the executive director may direct that the offender's facility be padlocked or may request the attorney general to institute legal proceedings.

### Lower Rio Grande

#### Introductory Provisions 156.31.01.001-.005

This subchapter contains information specifically applicable to the Lower Rio Grande, which includes the responsibility of each allottee as to designation of an agent, requirements for requests for written certification of authorization to divert and details as to certification duration and posting.

#### Financing Watermaster Operation 156.31.05.001

This subchapter describes the procedures for the assessment of administrative costs to holders of water rights and payment to the department for subsequent deposit in a special fund to finance the Lower Rio Grande Watermaster Operation. It also describes the effect of payment delinquency and procedures for reinstatement.

#### Amendments to and Sales of Water Rights 156.31.10.001-.007

This subchapter contains a description of board policy concerning recognition of sales of and authorization of amendments to water rights in the Lower Rio Grande,

of executive director, commission and Watermaster requirements as to such sales and amendments and also conversion factors for changes in purpose of use.

### Middle Rio Grande

#### Amendments to and Sales of Water Rights 156.32.10.001-.004

This subchapter contains a description of board policy concerning recognition of sales of and authorization of amendments to water rights in the Middle Rio Grande and of executive director and commission requirements as to such sales and amendments.

#### Introductory Provisions 156.32.01.001-.004

This subchapter is specifically applicable to interim operation of the Middle Rio Grande and includes the responsibility of each allottee as to designation of an agent, requirements for request for written certification of authorization to divert, and details as to certification duration and posting.

### Regionalization

#### Northbelt 156.70.01.001-.004

This subchapter (1) defines an area in Harris County known as the Northbelt Service Area, (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area, (3) designates the Gulf Coast Waste Disposal Authority as the entity in whose name all applications for permits to discharge domestic waste within the defined area shall be made, and (4) specifies the duties of the Gulf Coast Waste Disposal Authority pursuant to such designation.

#### Shoreacres 156.70.05.001-.006

This subchapter (1) defines an area in Harris County, including the City of Shoreacres, its extraterritorial jurisdiction, and Bayshore Municipal Utility District; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area; (3) designates the Gulf Coast Waste Disposal Authority as the entity to provide the regional system for the area, and (4) specifies the duties of the Gulf Coast Waste Disposal Authority pursuant to such designation.

#### South Mayde Creek 156.70.10.001

This subchapter defines an area in the South Mayde Creek Watershed, Harris County, and describes the policy of the department pursuant to Section 26.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the defined area.

**Rosillo Creek 156.70.15.001-.002**

This subchapter (1) defines an area in Bexar County in the watersheds of Rosillo, Leon, Olmos, and Salado Creeks; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area, and (3) designates the City of San Antonio as the governmental agency to implement the regional and areawide system in the defined area.

**East Fork Trinity River 156.70.20.001-.005**

This subchapter (1) defines a portion of the watershed area of the East Fork of the Trinity River in Dallas, Kaufman, Rockwall, and Collin Counties; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area; (3) designates the North Texas Municipal Water District as the governmental entity to design, construct, and be the operating agency for a regional system in the defined area, and (4) specifies the duties of the North Texas Municipal Water District pursuant to such designation.

**Lower Rio Grande Valley 156.70.25.001-.005**

This subchapter (1) defines an area within Hidalgo and Cameron Counties; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area; (3) designates the Rio Grande Valley Pollution Control Authority as the governmental entity to design, construct, and operate a regional sewerage system in the defined area, and (4) specifies the duties of the Rio Grande Valley Pollution Control Authority pursuant to such designation.

**Harris County Fresh Water Supply District No. 63 156.70.30.001-.004**

This subchapter (1) defines an area in Harris County including and adjacent to Harris County Fresh Water Supply District No. 63 and Rosewood Municipal Utility District; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area; (3) designates the Gulf Coast Waste Disposal Authority as the entity responsible for the planning, construction, and operation of an integrated regional wastewater treatment system for the defined area, and (4) specifies the duties of the Gulf Coast Waste Disposal Authority pursuant to such designation.

**Cibolo Creek 156.70.35.001-.006**

This subchapter (1) defines a portion of the Cibolo Creek Watershed; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or

areawide waste collection, treatment, and disposal facilities for the area; (3) designates the Cibolo Creek Municipal Authority as the governmental entity to develop a regional sewerage system in the defined area, and (4) specifies the duties of the Cibolo Creek Municipal Authority pursuant to such designation.

**Blackhawk 156.70.40.001-.007**

This subchapter (1) defines an area in the vicinity of the City of Friendswood, known as the Blackhawk Service Area; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area; (3) designates the City of Friendswood and the Gulf Coast Waste Disposal Authority, jointly, as the entities responsible for the planning, construction, and operation of an integrated regional wastewater treatment system for the defined area, and (4) specifies the duties of the City of Friendswood and the Gulf Coast Waste Disposal Authority, jointly, pursuant to such designation.

**Vidor Metropolitan Area 156.70.45.001-.004**

This subchapter (1) defines an area in northwest Orange County; (2) describes the policy of the department pursuant to Section 21.081 concerning regional or areawide waste collection, treatment, and disposal facilities for the area; (3) designates the Orange County Water Control and Improvement District No. 1 as the governmental entity to design, construct, and be the operating agency for a regional sewerage system in the defined area, and (4) specifies the duties of the Orange County Water Control and Improvement District No. 1 pursuant to such designation.





An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register* except where a federal statute or regulation requires implementation of a rule on shorter notice.

An agency, on request, shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling considerations urged against the agency's decision.

**Numbering System**— Each rule is designated by a unique 10-digit number which is divided into four units by decimal points. The first unit (three digits) indicates the agency which promulgates the rule. The second unit (two digits) indicates the category of rules to which the rule belongs. The third unit (two digits) indicates the subcategory of rules, if any, within the category. The fourth unit (three digits) indicates the individual rule.

## Texas Animal Health Commission

### Pullorum-Typhoid

#### Fowl 177.08.04

Pursuant to the authority of Vernon's Annotated Civil Statutes, Article 7014f-1, Section 1, the Texas Animal Health Commission has repealed Rule 177.08.04.011, which contained the rules and regulations for the control of pullorum and typhoid in fowls. This regulation was repealed because pullorum and typhoid in fowl no longer falls under the authority of the Texas Animal Health Commission.

Doc. No. 75943

### Fever Ticks 177.11.00

The Texas Animal Health Commission has adopted Rule 177.11.00.012 with one change in the proposed text. The change was made for clarification purposes and deals with scratch requirements of livestock.

A comment from the floor indicated that it would be easier to understand the meaning of the paragraphs in the regulation dealing with scratch requirements if the reader was referred to a specific paragraph which sets out guidelines to be followed concerning required scratching of livestock. No adverse comments were made.

After a thorough discussion, the commission voted to accept the objections and reword the paragraphs in the

regulation dealing with scratching of livestock, so that no confusion would arise for persons interpreting the meaning of the affected paragraphs.

This rule is adopted under the authority of Vernon's Annotated Civil Statutes, Article 7014g-1.

#### 012 Tick Eradication

##### (a) Definition of terms

(1) **Livestock**— Any domestic animal or captured wild animal that is capable of hosting or transporting ticks capable of carrying babesia (fever), including but not limited to, cattle, horses, mules, jacks, jennets, zebras, buffalo, giraffe, and deer.

(2) **Tick** shall be construed to mean any tick capable of transmitting babesiasis.

(3) **Dip, dipped, dipping, or treated**— Submerging livestock in a vat, spraying livestock in an adequate facility, or any sanitary treatment of livestock, as may be approved by the Texas Animal Health Commission. In order for such treatment for ticks to be officially recognized, it must be supervised by an authorized representative of the commission, written records maintained in that area tick office of all previous dips, and each animal painted branded so that it can be identified for a period of 18 days.

(4) **Certificate** shall mean a document issued by an authorized representative of the commission, for movement of livestock after said livestock have been found free of ticks and treated in a manner prescribed by the commission for the area and premise from which they originate.

(5) **Permit** shall mean a document issued by an authorized representative of the commission and signed by owners or caretakers of livestock allowing said livestock special movement privileges.

(6) **Free area**— Areas designated by the commission as being free of ticks or exposure to ticks. The extent of said area shall be determined by the appropriate barriers to the potential spread of ticks through the movement of livestock. Such barriers to be considered shall include, but not be limited to, single fences, double fences, two single fences, water courses, highways, and other barriers which accomplish the separation of livestock without straying.

(7) **Control purpose quarantine area**— Area designated by the commission for a systematic inspection of livestock and premises and control of the movement of livestock in order to investigate and control a suspected exposure of ticks. The extent of said area shall be determined by the appropriate barriers to the potential spread of ticks through the movement of livestock. Such barriers to be considered shall include, but not be limited to, single fences, double fences, two single fences, water courses, highways, and other barriers which accomplish the separation of livestock without straying.

(8) Temporary preventative quarantine area.

Areas designated by the commission for a systematic inspection of livestock and premises and treatment and control of movement of livestock in order to investigate, eradicate, and eliminate additional infestation from infested or exposed premises. The extent of said area shall be determined by the appropriate barriers to be potential spread of ticks through the movement of livestock. Such barriers to be considered shall include, but not be limited to, single fences, double fences, two single fences, water courses, highways, and other barriers which accomplish the separation of livestock without straying.

(9) Tick eradication area. Areas designated by the commission for a systematic inspection of livestock and premises and treatment and control of movement of livestock in order to investigate, eradicate, and eliminate additional infestation from infested premises. The extent of said area shall be determined by the appropriate barriers to the potential spread of ticks through the movement of livestock. Such barriers to be considered shall include, but not be limited to, single fences, double fences, two single fences, water courses, highways, and other barriers which accomplish the separation of livestock without straying.

(10) Premises. An area which can be defined by recognizable physical barriers creating its boundaries that prevent livestock from crossing said boundary under ordinary circumstances.

(11) Infested livestock. Livestock on which ticks have been found or livestock which occupy a premise with livestock on which ticks have been found and upon which eradication treatment has not been completed for movement from infested premises.

(12) Exposed livestock. Livestock that have entered an infested or exposed premises and have not been dipped within 14 days of the entry and removed from the infested or exposed premises, or livestock that have occupied exposed premises and have not completed treatment required for movement from exposed premises, or livestock that have occupied infested premises and have not completed treatment required for movement from infested premises, or livestock which have entered Texas from the Republic of Mexico without a certificate from the commission or the United States Department of Agriculture.

(13) Premises under vacation. Premises from which all livestock have been removed as prescribed by the commission.

(14) Scratch inspection of livestock shall mean an inspection of livestock by an authorized representative of the commission in a facility which will allow the person inspecting the animal to touch and see all parts of the livestock. A written record of all scratch inspections must be recorded in the offices of the commission for the inspection to be official.

(15) Range inspection of livestock shall mean an inspection of livestock under conditions which will allow the person inspecting the animal to see the animal close enough to detect ticks on the animal. A written record of inspections must be recorded in the offices of the commission for the inspection to be official.

(16) Premises inspection shall mean the routine inspection, at intervals of not more than 14 days, of premises boundaries and the livestock within for the purpose of documenting exposure of said premises by an authorized representative of the commission. A written record of all inspections must be recorded in the offices of the commission for the inspection to be official.

(17) Infested premises. Premises on which ticks have been found and systematic treatment has not been completed.

(18) Exposed premises. Premises which have received infested or exposed livestock or equipment or material capable of carrying ticks from infested or exposed premises and systematic treatment has not been completed.

(19) Adjacent premises. Premises located contiguous to exposed premises or infested premises.

(20) Check premises. Premises located in a tick eradication area, temporary preventative area, or control purpose area that are not classified as infested premises, exposed premises, or adjacent premises.

(21) The commission. The Texas Animal Health Commission.

(b) Designation of an area.

(1) All areas of the state shall be classified by the commission as one of either free area, control purpose quarantine area, temporary preventative quarantine area, or tick eradication area. The commission shall immediately redesignate an area upon the change in circumstances that warrants reclassification. All areas except free areas shall be considered quarantined under the animal health laws of Texas. The boundaries of all areas shall be determined by the Animal Health Commission according to the needs of inspection and treatment for known or suspected infestations of ticks.

(2) Upon the designation of any area other than the free area, and upon the request of five livestock owners within the area, the commission shall appoint an area advisory committee from recommendations made by livestock owners within the area. The area committee shall be kept informed at all times of the general plan of inspection and treatment for the area, of the results of all inspections of livestock and premises, and of changes in boundaries due to straying or change in area designation.

(3) The commission shall notify all livestock owners within an area, except the free areas, as to the type area in which their livestock are located. All

changes in designation of area shall be in writing with the reason for change given.

(c) Designation of premises

(1) All premises within a tick eradication area, temporary preventative area, or temporary control area shall be classified by the commission as either infested, exposed, adjacent, or check premises. The commission shall immediately redesignate premises upon the change in circumstances that warrants reclassification. The boundaries of all premises shall be determined according to the needs of inspection and treatment for known or suspected infestations of ticks.

(2) The commission shall notify livestock owners within an area, except free area, as to the type premises on which their livestock are located. All changes in designation of premises shall be in writing with the reason for change given.

(d) Movement of livestock

(1) When livestock are moved, the person in charge of the movement (trail boss, truck driver) shall have a copy of any certificate or permit required of the livestock for movement.

(2) All permits or certificates shall be void unless the livestock begin movement to the stated destination immediately upon issuance.

(3) Movement must be direct to the destination stated on the permit or certificate. If moved on foot, the movement must follow a designated route. No livestock may be unloaded at any other destination than shown on the permit or certificate.

(4) Any livestock that become exposed during movement shall be scratch inspected and dipped within 14 days of such exposure.

(5) No certificate for movement shall be issued unless the owner of the livestock to be moved has fully complied with all rules and regulations of this tick program.

(6) On any movement allowed following a required dip, the livestock to be moved shall be loaded in the transporting conveyance wet or placed in a pen approved by an authorized representative of the commission.

(7) No movement shall be made when a dip is required prior to movement and rain occurs prior to the drying of the dip that results in the dip dripping to the ground. In such event, the certificate for movement is void and another dip is required before movement.

(e) Restrictions on movement of livestock

(1) Movement originating in the free area. There are no restrictions on the movement of livestock from a designated free area.

(2) Movement originating in a tick eradication area. The owner or caretaker of livestock located in the tick eradication area shall not move, or allow the movement of any livestock from the said area, or from any premises therein, without a permit or certificate cover-

ing the livestock to be moved issued by an authorized representative of the commission; nor shall any person accept such shipment in or from the said area, unless the owner first delivers unto them an original permit or certificate for the livestock.

(A) Movement originating in infested premises within tick eradication area. Certificates for movement shall be issued either after the livestock to be moved have been dipped and not less than seven nor more than 14 days later have been found free from ticks by scratch inspection, dipped, and not less than seven nor more than 14 days later, found free of ticks by scratch inspection and dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(B) Movement originating in exposed premises within tick eradication area. Certificates for movement shall be issued either after the livestock to be moved have been found free from ticks by scratch inspection, dipped, and not less than seven nor more than 14 days later found free of ticks by scratch inspection and dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(C) Movement from adjacent premises within tick eradication area. Certificates for movement shall be issued after the livestock to be moved have been found free from ticks by scratch inspection and have then been dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(D) Movement originating in check premises within tick eradication area. Certificates for movement shall be issued after the livestock to be moved have been found free from ticks by scratch inspection and have then been dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(3) Movement originating in a temporary preventative quarantine area. The owner or caretaker of livestock located in the temporary preventative quarantine area shall not move, or allow the movement of any livestock from the said area, or from any premises therein, within a permit or certificate covering

the livestock to be moved issued by an authorized representative of the commission, nor shall any person accept such shipment in or from the said area, unless the owner first delivers unto them an original permit or certificate for the livestock.

(A) Movement originating in infested premises within temporary preventative quarantine area. Certificates for movement shall be issued either after the livestock to be moved have been dipped and not less than seven nor more than 14 days later have been found free from ticks by scratch inspection, dipped, and not less than seven and not greater than 14 days later, found free of ticks by scratch inspection and dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven and not greater than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(B) Movement originating in exposed premises within the temporary preventative quarantine area. Certificates for movement shall be issued either after the livestock to be moved have been found free from ticks by scratch inspection, dipped, and not less than seven nor more than 14 days later, found free of ticks by scratch inspection and dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(C) Movement originating in adjacent premises within the temporary preventative quarantine area. Certificates for movement shall be issued after the livestock to be moved have been found free from ticks by scratch inspection and have then been dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(D) Movement originating in check premises within temporary preventative quarantine area. Certificates for movement shall be issued after the livestock to be moved have been found free from ticks by scratch inspection and have then been dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(4) Movement originating in control purpose quarantine areas. The owner or caretaker of livestock located in the control purpose quarantine area shall not move, or allow the movement of any livestock, from the said area, or from any premises therein without a permit or certificate covering the livestock to be moved

issued by an authorized representative of the commission; nor shall any person accept such shipment in or from the said area, unless the owner first delivers unto them an original permit or certificate for the livestock.

(A) Movement originating in premises with in control purpose quarantine area. Certificates for movement shall be issued after the livestock to be moved have been found free from ticks by scratch inspection and have then been dipped, or if moving directly to slaughter by sealed conveyance, by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection, or by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection.

(f) Restrictions on movement of hides and carcasses.

(1) Movement from the free area. There are no restrictions on the movement of hides and carcasses from the free area.

(2) Movement from any area other than the free area. Hides and carcasses of any animal, whether livestock or other, shall not move without a permit issued by an authorized representative of the commission. No permit shall issue unless the following have been met:

(A) The hides and carcasses have been inspected by authorized representatives of the commission.

(B) The hides and carcasses have been dipped in accordance with instructions issued by the authorized representative of the commission who inspected the hides and carcasses.

(g) Dipping of livestock general. All dipping prescribed herein shall be done under the supervision of representatives authorized by the commission. The commission shall authorize for use in official dipping to rid animals of the tick, only those proprietary brands of dips in the applicable concentration that has been approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the Texas Animal Health Commission. The concentration of the dipping chemical used shall be maintained in the percentage specified for official use, by means of the approved vat management techniques established for the use of the applicable agent or, if applicable, by an officially approved vat side test by the commission. The owner or caretaker of livestock shall be responsible for presenting the livestock to the dipping vat, dipping the livestock, and removing the livestock, and shall provide such labor as is necessary to perform all required functions.

h) Required dipping of livestock.

(1) The owner or caretaker of livestock on exposed premises in the tick eradication area or infested or exposed premises in the temporary preventative quarantine area shall present them to be scratch in-

spected and dipped, followed by regular dipping without scratch inspection at intervals of 14 days until said livestock are moved from the premises in accordance with these rules, or for the period of time shown on Table I or Table II for the appropriate locality and starting date.

(2) The 14 day interval may be extended due to circumstances beyond the control of the owner upon approval by an authorized representative of the commission. In no event shall the extension be for a period greater than three days. If the extension is granted, the next dip shall be on the original 14 day schedule.

(3) All scratch inspection and dipping shall be under instructions issued by the commission. All requirements of the owner shall be in written form directed to the owner or caretaker. An inspector for the commission shall deliver the instructions in person along with a copy of these rules. All premises boundaries shall be listed in the order.

(4) The scratch inspection and first dip must be within 14 days from the date infestation or exposure is discovered unless otherwise approved by the commission.

(5) The starting date for Table I (pasture vacation schedule, south of Highway 90) and Table II (pasture vacation schedule, north of Highway 90) shall be the date of the last scratch inspection and dip that live ticks are discovered.

(6) A dip shall not be official unless 10 percent of the livestock within the premises affected are dipped on schedule.

(i) Vacation of premises. Upon the removal of all livestock from premises, the premises shall remain classified as before the removal for the period shown on Table I or Table II for the locality and starting date. The starting date is the date the last live tick is found. Upon expiration of the time shown in Table I or II, the premises shall be reclassified as is appropriate within the area or shall be reclassified as a control purpose quarantine area for six months.

(j) Required inspection of premises. Infested premises, exposed premises, and adjacent premises shall be premises inspected every 14 days by an authorized representative of the commission. The 14 day interval may be extended due to circumstances that prevent the inspection. Check premises shall be premises inspected when deemed necessary by an authorized representative of the commission.

(k) Required scratch inspection of livestock

(1) The owner or caretaker of livestock on any premises shall present them to be scratch inspected at any time specified by notice from an authorized representative of the commission.

(2) No movement of cattle from any premises in a tick eradication area, temporary preventative quarantine area, or control purpose quarantine area

shall be allowed unless the livestock on the premises have been scratch inspected sometime prior to the movement and after the premise has been designated.

(l) Handling and feeding of livestock

(1) All conveyances which have contained infested or exposed livestock must be cleaned and disinfested before reloading.

(2) All material removed from such conveyances must be kept in an enclosure inaccessible to livestock. A space of not less than 15 feet must intervene between the fence of the cleaning and disinfesting enclosure and the material unloaded from such cars. No material shall be removed from said enclosures without approval in writing by the commission.

(3) Hay and other feed for feeding livestock, while in conveyances moving from infested or exposed premises or for feeding livestock in tick free pens in infested premises or exposed premises, shall be shipped from other than infested or exposed and kept stored in bins or other places, free from all possible sources of infestation.

(4) All bedding, manure, and other matter moved from conveyances or places in the tick eradication area or temporary preventative quarantine area shall be moved only under the direction of authorized representatives of the commission.

(m) Hearing on protest of designation of area or premise or dipping directions or other orders

(1) Any person that desires a hearing for the purpose of protesting the designation of an area or premises or against the enforcement of any dipping direction, or scratching notice, or any other order of the commission, issued under the provisions of these regulations, may file with an authorized representative of the commission a sworn application for a hearing, which application shall be forwarded by the authorized representative to the commission. In case of a protest from dipping, the application must be filed 10 days prior to the dipping date. The commission shall set a hearing on applications and give notice to the applicant and other parties who join the action.

(2) The applicant may appear at the hearing either in person or by attorney, or both, and may submit such ex parte affidavits as he desires. The hearing shall be conducted and governed by the terms and provisions of the Administrative Procedure and Texas Register Act, Vernon's Annotated Civil Statutes, Article 6252-13a. The commission shall also consider controverting affidavits and statements. The Administrative Procedure and Texas Register Act provides generally, as follows, with respect to hearings: the commission may swear witnesses and take their testimony under oath, and the rules of evidence as applied in non-jury civil cases shall be followed. Upon a showing of good cause, witnesses and records can be subpoenaed.

for testimony and use at the hearing or on deposition, and any party can be compelled to produce such records and documents as may be necessary and proper for the proceedings; witnesses shall be subject to cross-examination, and the commission can take notice of those generally recognized facts within the commission's area of expertise.

(3) The commission shall render its decision in writing and transmit the same to the authorized representative who received the original application, who shall thereupon either deliver the same in person to the applicant or transmit the same to him by registered mail to the address shown in said application.

(4) If the protest is for dipping and the commission overruled said application, it shall be the duty of said person to thereafter dip said livestock on all the dipping dates prescribed in said dipping direction, but he shall not be required to dip said livestock on the first dipping date following the delivery to him of copy of the decision rendered by said commission, unless two full days intervene between the date of said service and the said dipping date, provided that where service is by registered mail, the time of depositing same in the mail without regard to whether it is received shall be regarded as the time of said service, but he shall not be required to dip said livestock on the first dipping date following said service, unless four full days intervene between the date of depositing the same in said registered mail and the first dipping date thereafter.

(n) Regulations on cattle from the Republic of Mexico.

(1) All livestock which have been in the Republic of Mexico within six months of their entry into Texas shall be firebranded on the tailhead with the letter "M," in such size and clarity to be visible on range inspection.

(2) The owner or caretaker of livestock which have been in the Republic of Mexico within six months of their entry into Texas shall not move, or allow the movement of such livestock to any area of Texas other than the free area, nor shall any person accept a shipment of such livestock into any area other than the free area.

Doc No 776950

## Tuberculosis

### Cattle 177.12.01

The Texas Animal Health Commission has adopted Rule 177.12.01.013 with no change in the proposed text.

One comment from the floor indicated that there was no substantial change in the rule. The main change is that the agency desires to incorporate the comparative cervical test into its program. By incorporating this

test, the agency would be a little more restrictive on herds with actual bovine tuberculosis in them.

The commission, by authority of Vernon's Annotated Civil Statutes, Article 7014f-1, has adopted Rule 177.12.01.013 to read as follows:

#### 013 Cattle

(a) Exposed to or infected with. Whenever the Texas Animal Health Commission has reason to believe that any livestock has been exposed to or is infected with tuberculosis, that premises and all livestock thereon shall be quarantined subject to the tuberculin test.

(b) Who may administer tuberculin test. Tuberculin tests shall be conducted by a veterinarian employed by the Texas Animal Health Commission or the United States Department of Agriculture or by an accredited veterinarian. All tests are official tests and must be reported to the Texas Animal Health Commission on VS Form 6-22 and continuation sheet VS Form 6-22B or an Official Health Certificate. Accredited veterinarians are permitted to use only the 1cc caudal fold test.

(c) Restraint. Each animal must be effectively restrained by use of halter, nose lead, squeeze gate, or chute, or other methods expedient to the prevailing situation. A good injection is imperative and the animal must be properly restrained in order to carry out this procedure correctly.

(d) Identification. All animals tested must be permanently individually identified by cartag, tattoo, or fire brand. Chain numbers are not acceptable.

(e) Equipment. Needles used in applying the tuberculin test will be limited exclusively to those of 26 gauge and three eighths inch exposure. Syringe shall be a tuberculin syringe.

(f) Site of injection. In routine testing the caudal fold shall be the site of injection. Cervical tests will be used only by regulatory veterinarians.

(g) Procedure for injection.

(1) Caudal fold. Prior to injection, examine the caudal fold for any abnormalities that may confuse the interpretation of the test. Note and point them out to the owner. When necessary, clean the site with dry cotton or cotton moistened with alcohol and, in routine testing, inject 1cc of tuberculin intradermally into the precleaned site. In making the injection, extreme care must be taken to assure intradermal inoculation of tuberculin. Substantially all of the exposed needle should be inserted to prevent leakage of the tuberculin at the injection site. The syringe and needle must be maintained in a clean condition. This can be done by using dry cotton to remove all foreign matter from the needle and syringe. This procedure requires very little time and will help reduce the possibility of an abscess which might confuse the reading.

(2) **Single cervical.** The injection site is the preclipped side of the neck in the middle third of the distance between the point of the shoulder and the angle of the jaw, on a line parallel to the spine of the scapula. Inject 2cc of tuberculin intradermally in the center of the clipped area.

(3) **Comparative cervical.** *M. avian* and *M. bovis* balanced PPD tuberculin is injected intradermally into two separate preclipped areas of the neck. The upper site (avian PPD) is about four inches below the crest of the neck, the lower site (bovine PPD) is five inches below the upper site.

(4) **Dosage.** One-tenth cubic centimeter (.1cc) of tuberculin is used for routine caudal fold testing and for testing of herds under quarantine that have not had *M. bovis* lesion reactors revealed in it. Two tenths cubic centimeter (.2cc) of tuberculin is used by regulatory veterinarians in herds that have had *M. bovis* lesion reactors revealed in it or on individual animals from an *M. bovis* herd. Dosage for comparative cervical testing will be 1cc of balanced *M. bovis* and *M. avian* tuberculins.

(5) **Observation.** Careful consideration must be given to the observation of each animal. It is essential that the site of injection on the properly restrained animal be carefully examined by palpation or measurement approximately 72 hours following injection. Visual observation only of animals can in no way be considered an acceptable procedure.

(6) **Reporting extent of reaction with symbols.** Caudal fold. Tissue disturbance may vary from those barely perceptible to a swelling the size of a fist or larger. The response may be hard and circumscribed or soft and diffused with no distinct demarcation. The size, shape, or consistency of the tissue response does not reflect the degree of infection. The interpretation and classification of tuberculin responses, therefore, must be based on the professional judgment of the testing veterinarian. The following are guidelines for classification of cattle tested with the caudal fold test:

(1) **Reactor "R"** Animals showing a circumscribed swelling 5mm in diameter (3/16 of an inch) (P) or a diffuse swelling twice as thick as the normal caudal fold (X) or greater response to tuberculin on routine test should be classified as reactors unless in the professional judgment of the testing veterinarian a suspect classification is justified.

(2) **Suspect "S"** Animals showing a response to tuberculin not classified as reactor with the exception noted below.

(3) **Negative "N"** Animals showing no response to tuberculin or those animals with responses which have been classified negative for *M. bovis* by the comparative cervical tuberculin test.

(4) **Single cervical**

(A) **Reactor "R"**--animals showing any swelling at the injection site.

(B) **Negative "N"**--animals showing no swelling at the injection site.

(5) **Comparative cervical test.** The skin thickness of each site of each animal is recorded. The pre-injection measurement of each animal is then subtracted from the post-injection measurement and the difference for each site is determined. This "skin" thickness difference value is plotted on the scattergram, VS Form 6-22D. The classification of each animal will be according to the zone into which the results are graphed.

(A) **Negative "N"**

(B) **Suspect "S"**

(C) **Reactor "R"**

Any animal in the suspect zone on the consecutive comparative cervical test will be classified Reactor "R".

(k) **Reporting of tuberculin tests.** A report of all tuberculin tests, including the individual identification of each animal of ear tag number or tattoo age, sex and breed, and a record of the size of the responses, shall be submitted promptly to the Texas Animal Health Commission.

(l) **When suspects are classified using the caudal fold test, the following requirements are to be accomplished:**

(1) Report suspects on test chart with a classification of tuberculin responses and forward chart to Texas Animal Health Commission promptly.

(2) Inform the owner that

(A) As a result of this test, the suspect shall be quarantined to the premise. This quarantine will be issued by the testing veterinarian.

(B) It is recommended that the suspect animals be isolated from the remainder of the herd. If this is a dairy herd, it is also recommended that these animals be milked last.

(C) If the herd owner desires to sell the suspect(s), the testing veterinarian must contact the Texas Animal Health Commission, who will issue a VS Form 1-27 permit for movement of these animals direct to slaughter at a plant under veterinary inspection.

(D) All suspects not sold to slaughter will be retested within 10 days of the original test, using the comparative cervical test or, in 60 to 90 days, utilizing the comparative cervical test or caudal fold test by a representative of the Texas Animal Health Commission. This representative will contact the owner to set a test date.

(E) No indemnity will be paid on animals in the suspect classification.

(m) **Handling the caudal fold suspect herd:**

(1) If the suspects are negative on retest, all restrictions are removed.

(2) If the caudal fold suspects are slaughtered and have no gross lesions of tuberculosis, all restrictions are removed.

(3) Any suspect to the comparative cervical test that is slaughtered with no gross lesions shall be considered as negative. Suspects to the comparative cervical test that are not slaughtered will be retested in

60 to 90 days and if they are negative all restrictions are removed. If the suspect remains a suspect, the animal will be classed as a reactor and branded.

(4) Reactors to the comparative cervical test will be branded and tagged and sold direct to slaughter.

(n) Disposal of reactors. All animals classified as tuberculin reactors must have a red reactor tag placed in the left ear and a fire brand "T" not less than three inches high on the left jaw. This procedure is to be carried out by the testing veterinarian before he leaves the premises. He also is to advise the owner that a representative of the Texas Animal Health Commission will contact him within a few days and that no animals are to be moved in the meantime. Test charts must be completed at the time reactors are disclosed and forwarded to the Texas Animal Health Commission. A representative of the Texas Animal Health Commission will:

(1) Issue a permit to ship reactor animals direct to slaughter. Reactor animals must be slaughtered within 15 days of classification.

(2) Complete indemnity claims (VS Form 1-23). If more than seven animals are involved, make all individual entries on continuation sheets (VS Form 1-23A). If more than 10 animals are involved, a professional appraiser shall be used.

(3) Issue Texas Animal Health Commission Disease Quarantines.

(4) Complete statement of appraisal.

(5) Complete history and record sheet.

(6) Arrange for cleaning and disinfecting.

(7) Mail completed Station Form 6-2 (cleaning and disinfecting form).

(8) Inform the owner that if he desires to sell any animals which are in the quarantined herd, he must write or phone the Texas Animal Health Commission to request a permit.

(9) Inform the owner that any animals added to his herd while under quarantine that are not kept apart from the rest of the herd are not eligible for federal indemnity if they should later react to the tuberculin test.

(o) Indemnification to cattle owners. After said reactors are slaughtered, the owner shall submit to the Texas Animal Health Commission a written statement made by said establishment showing the amount of salvage paid for each animal. The Texas Animal Health Commission shall then submit to the comptroller's department a bill signed and sworn to by said owner in the amount not to exceed one-third of the appraised value to said reactors after deducting the amount of salvage received from same. In no case shall the Texas Animal Health Commission approve a bill for a greater amount than \$70 in the indemnification of any purebred animal or a greater amount than \$35 in the indemnification of a grade animal or any greater amount than is paid said owner by the Animal and Plant Health Inspection Service of the United States Department of Agriculture for the same animal. No owner shall receive indemnification for tuberculin reactors unless such reactors have been appraised and their value ascertained as provided in the law. No indemnity will be paid unless all of the animals in the herd are

tested. No owner shall receive indemnification for his tuberculin reactors unless and until he complies with all provisions of the law and the rules and regulations of the Texas Animal Health Commission governing this subject. No indemnity will be paid on any animal slaughtered which is still in the suspect classification.

(p) Retesting and release of quarantine.

(1) Sale of feeder calves from quarantined herds will be restricted. Feeder calves under 12 months of age that have passed a tuberculin test within 60 days may be permitted to move intrastate to a quarantined feedlot.

(2) Herds in which *Mycobacterium bovis* infection has been disclosed shall remain under quarantine and must pass two tuberculin tests at intervals of at least 60 days and one additional test after six months. At least one of these tests will be a single cervical test. The comparative cervical test will not be used in *M. bovis* herds except when approved by the executive director of the Texas Animal Health Commission. Minimum quarantine period shall be 10 months from slaughter of lesion reactors.

(3) Herds in which NGL reactor(s) only occur and no evidence of *Mycobacterium bovis* infection has been disclosed may be released from quarantine after a 60-day negative retest on the entire herd. This will be a .1cc caudal test. Any caudal fold responses may be retested using the comparative cervical test.

(4) Suspects in herds where only suspect animals are disclosed shall be quarantined to the premises until retested and classified negative or shipped direct to slaughter under permit. If no gross lesions at slaughter, quarantine will be released.

(q) Special retests of high-risk herds.

(1) In herds where *Mycobacterium bovis* infection has been confirmed but the herd not depopulated, five annual tests on the entire herd, followed by two tests at three-year intervals, shall be applied following the release of quarantine.

(2) In a newly assembled herd on premises where a tuberculous herd has been depopulated, two annual herd tests shall be applied to all cattle; the first test to be applied approximately six months after assembly of the new herd. These tests shall be followed by two complete herd tests at three-year intervals. If the premises are vacated for one year, these requirements may be waived.

(r) 6-35 Traceback (animals which show lesions which are compatible or suggestive with bovine TB at slaughter establishments). When a 6-35 is received on a herd, the entire herd must be quarantined and all cattle tested. The testing will be conducted by a representative of the Texas Animal Health Commission.

(1) If the entire herd is negative, the quarantine is released and no further testing will be required unless additional tracebacks are received.

(2) If the information is a direct trace to the herd, all responding animals will be classed as a reactor.

(3) If the information is an indirect trace, the comparative cervical test can be used on any responding animals.



(4) When a 6-35 report is traced back to a feedlot, no test will be conducted on the animals remaining in the feedlot. However, an extensive effort should be made to locate the herd of origin. Cattle in feedlots known to be exposed to tuberculous cattle shall be quarantined and shipped under permit directly to slaughter.

(s) Tuberculosis accredited herd.

(1) General provisions. Definition: "Accredited herd"--An accredited herd is one which has passed at least two consecutive annual tuberculin tests and no other evidence of bovine tuberculosis has been disclosed; all testing is to be conducted at owner's expense.

(2) Accredited herd plan. Animals to be tested--Testing of herds for accreditation or reaccreditation shall include all cattle over 24 months of age and any animals other than natural additions under 24 months of age. All natural additions shall be individually identified and recorded on the test report as members of herd at the time of the annual test.

(3) Herd additions. Herd additions must originate directly from one of the following:

(A) Accredited herd.

(B) Herd in an accredited free state.

(C) Herd in a modified accredited area that has passed a herd test of all animals over 24 months of age within 12 months, and the individual animals for addition were negative to the tuberculin test conducted within 60 days.

(D) Herd in a modified accredited area not meeting requirements of (A), (B), or (C) of this paragraph; individual animals for addition must pass negative test within 60 days prior to entering the premises of the accredited herd and must be kept in isolation from all members of the accredited herd until negative to a test conducted after 60 days of date of entry. Animals added under (B), (C), and (D) shall not receive accredited herd status for sale purposes until they have been members of the herd at least 60 days and are included in a herd retest.

(4) Accreditation and reaccreditation. To qualify for accredited herd status, the herd must pass at least two consecutive annual tuberculin tests with no evidence of bovine tuberculosis disclosed. All animals must be bona fide members of the herd. Qualified herd may be issued a certificate by the local state and federal officials. The accreditation period will be 12 months (365 days) from the anniversary date and not 12 months from the date of the reaccreditation test. To qualify for reaccreditation, the herd must pass an annual test within a period of 10 to 14 months from the anniversary date.

(A) Modified Tuberculosis Accredited Area Plan. The rules and regulations governing the Modified Tuberculosis Accredited Area Plan will be the uniform methods and rules--bovine tuberculosis eradication, as adopted by the U.S. Animal Health Association and approved by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

(B) Accredited Free State Plan. The rules and regulations governing the Accredited Free State

Plan will be the uniform methods and rules--bovine tuberculosis eradication, as adopted by the U.S. Animal Health Association and approved by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Doc No 776951

## Interstate Shows and Fairs 177.16.00

The Texas Animal Health Commission has adopted Rule 177.16.00.016 with changes in the proposed text.

One change concerns a confusion that has arisen between Paragraphs (B) and (C) in Section (b). Paragraph (B) states, in part, that all dairy cattle six months of age and over and all beef cattle 18 months of age and over must be brucellosis tested negative within 30 days prior to entry, placed under quarantine, and subjected to another test within 15 days after arrival at destination in Texas. Paragraph (C) states, in part, all female dairy cattle born after September 1, 1977, and over three months of age must be official vaccinates, except cattle consigned for slaughter or to a quarantined feedlot.

One comment was made that there are very few heifer calves between the ages of three and six months of age being brought into Texas, and to avoid confusion on entry requirements, Paragraph (C) of Section (b) should be eliminated.

Only one comment opposing the adoption of Section (b) of Rule 177.16.00.016 was received by the commission. This comment suggested that if incoming female dairy cattle above three months must be vaccinated, then the same thing should hold true for beef cattle, that to require this would be discriminatory for incoming dairy cattle.

After a detailed discussion, the commission voted to accept the objections to Paragraph (C), stating that it should be eliminated from the proposed rule.

The next change concerns Subsection 3 in Section (e). A comment was received that this paragraph should have words added for clarification. This comment suggested that the words "or originate from a validated brucellosis free herd" should be added to this subsection, for those persons dealing with the import of swine into the state. No adverse comments were heard.

After a thorough discussion, the commission voted to accept the objections so no confusion would arise for persons interpreting the meaning of this subsection.

The next change concerns Subsection (1) in Section (h). A comment was received from the floor to the effect that there is no longer a plan referred to as the National Turkey Improvement Plan, and that this language should be eliminated from Subsection (1). No

adverse comments were heard. After a thorough discussion, the commission voted to accept the objection and to eliminate the words "and the National Turkey Improvement Plan" from Subsection (1) of Section (h).

The Texas Animal Health Commission, by authority of Article 7014f-1, Vernon's Annotated Civil Statutes, has adopted Rule 177.16.00.016 to read as follows:

*.016. Interstate Regulations Governing Admission of Livestock and Poultry Into Texas and Regulations Governing Interstate and Intrastate Admission of Livestock into Shows, Fairs, and Exhibitions.*

(b) Cattle.

(1) Brucellosis. All cattle entering Texas must be accompanied by an official health certificate showing individual identification by eartag, fire brand, tattoo number, or other approved method of identification, and must comply with one or more of the following provisions:

(A) A permit prior to entry is required from the Texas Animal Health Commission on all dairy cattle six months of age and over and all beef cattle 18 months of age and over unless consigned directly to slaughter or to an approved livestock market.

(B) All dairy cattle six months of age and over and all beef cattle 18 months of age and over, excluding steers and spayed heifers and official vaccinates under 20 months of age of dairy breeds and 24 months of age of beef breeds from herds not known to be infected, must be brucellosis tested negative within 30 days prior to entry, placed under quarantine, and subjected to another test at owner's expense within 15 days after arrival at destination in Texas, except:

(i) Cattle consigned for sale to approved livestock markets may enter the state without test, quarantined upon arrival at the market, and then, if sold for breeding purposes, be brucellosis tested, and if sold for feeding or slaughter, are required to be heat-branded properly with an "S," to be placed only on the left jaw or tailhead.

(ii) "S"-branded cattle of unknown status require no permit for movement to approved quarantined feedlots or slaughter; in addition, no permit will be required at a later date for intrastate movement from feedlots to slaughter.

(iii) Cattle consigned directly to an approved feedlot will be required to secure a permit of entry; such cattle are required to be "S"-branded on the left jaw or tailhead prior to entry, or on arrival.

(iv) An entry permit will be required of breeding cattle being consigned directly to a premise.

(C) Untested test-eligible cattle sold through livestock markets outside of Texas for movement into Texas shall be consigned directly to an approved slaughter establishment or an approved quarantined feedlot. Any cattle of this class found at a Texas

livestock market are in violation of federal regulations. These cattle may not be sold through this market, but shall be quarantined for shipment direct to an approved slaughter plant.

If brucellosis reactors are disclosed after arrival at a livestock auction in the State of Texas, reactors will be identified and consigned for immediate slaughter. The exposed animals in the shipment will be consigned either to slaughter or to an approved quarantined feedlot.

A waybill is acceptable on cattle consigned to an approved livestock market or directly to an approved slaughter establishment, and must provide the following information:

- (i) name and address of owner or shipper;
- (ii) point of origin;
- (iii) number and type animals covered by waybill, memorandum, or certificate;
- (iv) purpose for which they are being moved;
- (v) destination of animals.

All brucellosis tests of cattle shall be conducted by state or federal laboratories or laboratories approved by official of state of origin.

(2) Tuberculosis. Unless one of the following requirements can be met, all dairy and registered beef breeding cattle imported into the state must be accompanied by prior permit, secured from the Texas Animal Health Commission, and an official health certificate, and quarantined and tuberculin-tested within five days after arrival.

(A) Dairy or registered beef breeding cattle from accredited tuberculosis-free herds may enter without tuberculin test if accompanied by health certificate showing tuberculosis-free herd number originate from accredited tuberculosis free area.

(B) Dairy and registered beef breeding cattle may enter the state if certification can be made showing negative tuberculin test within 30 days prior to entry.

(C) Dairy and registered beef breeding cattle imported for exhibition purposes may enter, provided accompanied by negative tuberculin test conducted within 30 days prior to entry.

(D) Dairy and registered beef breeding cattle originating in Texas for exhibition purposes are required to be negative to the tuberculin test within 30 days prior to entering shows, fairs, and exhibitions.

(3) Scabies, fever ticks.

(A) Fever ticks. Cattle originating in fever tick quarantined areas must, in addition to other requirements, be accompanied by a certificate issued by a regularly employed state or federal inspector showing animals to be shipped free of infestation and exposure and dipped under supervision in recognized dipping

solution immediately prior to shipment and transported in clean and disinfected trucks, railroad cars, or other vehicles.

(B) Scabies. Cattle originating in scabies quarantined areas outside the State of Texas must, in addition to other requirements, be accompanied by a permit from the Texas Animal Health Commission and an official health certificate certifying that herd of origin has been inspected and declared free of scabies or exposure thereto and that cattle have been officially dipped in Toxaphene, Lime and Sulphur, Co-Ral, or GX 118 (Prolate), under supervision of state or federal employed personnel within 10 days prior to shipment and transported in clean and disinfected trucks, railroad cars, or other vehicles.

In addition, the executive director is authorized to place quarantines on other states or parts of states where cattle scabies has been known to exist in the previous 24 months requiring official dipping of all cattle within 10 days prior to entry, except cattle consigned directly to an approved slaughter establishment for immediate slaughter.

Slaughter cattle originating in a quarantined area will be required to be accompanied by an official health certificate or a certificate issued by a state or federal livestock inspector showing "Freedom from Scabies," in addition to a permit issued from the office of the Texas Animal Health Commission.

(4) Screwworms. All animals presented for entry into Texas from any area in which the screwworm is known to exist must be free of screwworms and screwworm fly eggs; wounds (infested or non-infested) must be treated with Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture approved screwworm killer and fly repellent. Animals for immediate slaughter shall be sprayed with a .25 percent Co-Ral spray, and wounds shall be treated with an approved screwworm killer and be free of worms. All other animals shall be sprayed with a .5 percent Korlan spray or .25 percent Co-Ral spray, and wounds shall be treated with Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture approved remedy. Lactating dairy animals and young animals under two weeks of age are exempt from spraying requirements; however, their wounds shall be treated as above.

(e) Swine.

(1) A permit must be obtained from the Texas Animal Health Commission for entry of all swine into Texas.

(2) Swine imported into Texas for feeding, breeding, or exhibition purposes must be accompanied by a health certificate certifying that:

(A) swine have not been fed garbage, either

raw or cooked;

(B) swine have not been exposed to hog cholera;

(C) swine have been permanently identified (ear tag, ear notch, or number tattoo).

(3) Breeding or exhibition swine imported into the state must be temperatured with the temperature recorded on the health certificate. They also will have a negative brucellosis test within the previous 30 days or originate from a validated brucellosis free herd and must have been vaccinated against leptospirosis within the previous six months.

(4) The following pseudorabies requirements apply to swine entering Texas for feeding, breeding, or exhibition purposes:

(A) swine originate from herds not known to be infected with pseudorabies and are negative to the SN (Serum Neutralization) test for pseudorabies within 30 days prior to movement; or,

(B) swine originate from herds not known to be infected with pseudorabies and where 20 percent of the herd or 10 head, whichever is greater, of sows that have farrowed one or more litters have been tested negative for pseudorabies within 90 days of movement.

(C) Feeder pigs moving on direct shipment into Texas or through a feeder pig sale must be accompanied by a health certificate from premise of origin and a statement that the herd of origin meets the requirements of Section B (above). Feeder pigs not originating from tested herds must be tested negative within 30 days prior to movement.

Exceptions: The Texas Animal Health Commission may allow feeder swine originating from a premise in states in which no known case of pseudorabies has been reported in the past 18 months to enter Texas exempt from the Pseudorabies requirements.

(5) Swine consigned direct to an approved slaughter establishment must be accompanied by a health certificate or waybill, in addition to a permit from the office of the Texas Animal Health Commission.

(6) Exhibitions, fairs, and shows. All swine imported into Texas and originating within Texas must meet entry requirements.

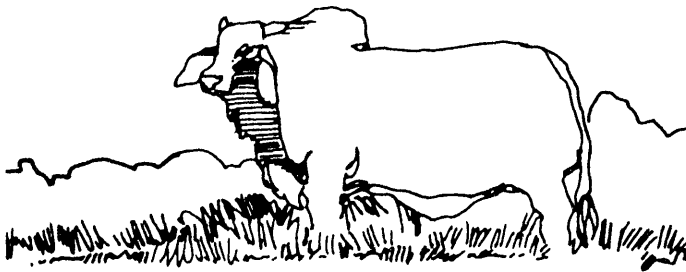
(h) Poultry.

(1) All poultry or domestic fowl shipped into the State of Texas shall be accompanied by an official health certificate issued by an accredited veterinarian on the day of shipment certifying that the poultry or domestic fowl have been inspected and are free of evidence of infectious or contagious disease and that the birds have not been vaccinated against Laryngotracheitis. The certificate must further state the birds have passed a negative test for pullorum and typhoid within 30 days prior to shipment or that they

originate from flocks which have met the pullorum-typhoid requirements of the National Poultry Improvement Plan.

(2) Poultry or domestic fowl consigned to slaughtering establishments maintaining federal post-mortem inspection are exempt from the above requirements, provided shipment is accompanied by a waybill indicating the plant of destination.

Doc. No 776952



## Swine

### Quarantines and Vaccination 177.18.10

The Texas Animal Health Commission has adopted Rule 177.18.10.020 with no change in the proposed text. A hearing was held on the adopted rule on December 1, 1977; no opposing comments were voiced by those present for the hearing.

The commission, by authority of Article 7014f-1, Vernon's Annotated Civil Statutes, has adopted Rule 177.18.10.020 to read as follows:

#### .020. *Pseudorabies.*

(a) A PRV advisory committee will be appointed by the Texas Pork Producers Association to give recommendations and consultations to the Texas Animal Health Commission.

#### (b) Quarantines.

(1) All herds suspicious of PRV will be investigated and quarantined pending final determination. Final determination of the presence or absence of PRV in a herd shall be made by the investigating veterinarian. Official diagnosis shall be based on standard diagnostic procedures including the serum neutralization test, the enzyme labeled antibody test, and/or virus isolation.

(2) All exposed herds will be quarantined until results of exposure are determined.

(3) Swine showing clinical signs of PRV shall not be removed from the premises. Swine on a quaran-

ted premise not showing clinical signs of PRV may be moved only directly to a slaughter plant and accompanied by a permit issued by a state or federal inspector, or may be shipped directly to a slaughter plant in an officially sealed vehicle.

(4) Vehicles used for slaughter delivery of quarantined swine will be cleaned and disinfected immediately after unloading and prior to loading with other livestock.

(5) Quarantines will be released when:

(A) all reactor animals have been removed from the premises; and,

(B) there have been no clinical signs of PRV on the premises after removal of the reactor swine; and,

(C) all exposed swine which remain in the herd have withstood two consecutive negative herd tests, the first being not less than 30 days from removal of last infected animals and the second test coming not less than 30 days from the first test. Herd additions must be tested negative prior to being added to the herd, remain on the premises 30 or more days and be retested negative; or,

(D) 30 days after all swine on the premises are depopulated and the premises are cleaned and disinfected under the direction of state or federal personnel.

(c) PRV vaccine.

(1) The executive director of the Texas Animal Health Commission will restrict the sale of approved PRV vaccine to a practicing accredited veterinarian for use only in infected and threatened herds. Official state laboratory confirmation of PRV constitutes an infected herd. The executive director will request a specific number of doses of vaccine to be shipped to the practicing veterinarian making the request.

(2) The herd owner will sign a memorandum of understanding with the Texas Animal Health Commission, and the practicing veterinarian will be accountable for the vaccine and its use by signing an agreement to this effect.

(3) All vaccinated animals are to be marked with a hole punched in the left ear of not less than one-half inch in diameter at the time of vaccination.

(4) All swine in vaccinated herds will be quarantined to the premise and may be moved only directly to a slaughter plant.

(d) Qualified PRV herd status.

(1) Qualified PRV herd status is attained by 100 percent testing of the adult breeding herd. Status will be maintained by subsequent testing of not less than 25 percent increments every 90 days (if less than 30 adult breeding animals in herd, test all). No animal(s) is to be tested twice in one year to comply with the 25 percent requirement. This should result in all eligible animals in the herd being subjected to the test during the year. All tests must be negative on the

qualifying and subsequent tests for herds to qualify and retain status.

(2) Herd additions must be SN tested negative within 30 days prior to entry on the premises, isolated, and retested within 30 days prior to adding to herd.

(3) Test records will be maintained by the Texas Animal Health Commission at its Austin office. Herd owners will receive a letter from the executive director of the Texas Animal Health Commission listing test dates, test results, the laboratory in which test was run, and the qualified herd status of the herd.

Issued in Austin, Texas, on December 1, 1977.

Doc. No. 776953      H. Q. Sibley, D.V.M.  
Executive Director  
Texas Animal Health  
Commission

Effective Date: January 2, 1978

For further information, please call (512) 475-4111

## Texas State Board of Control

### Building and Property Services Division

#### Elimination of Architectural Barriers 028.13.03

The Texas State Board of Control has adopted Rules 028.13.03.575-.585, relating to elimination of architectural barriers to the handicapped pursuant to Vernon's Texas Civil Statutes, Article 678g, with several amendments to the proposed text previously published in the *Register*. These amendments were adopted by the board at its regular stated meeting on December 9, 1977.

The proposed rules were published in the *Texas Register* on November 8, 1977 (2 TexReg 4263-4268), and comments were invited. Submitting written comments prior to December 9, 1977, were organizations supporting the handicapped, such as MIGHT and Advocacy, Incorporated, private attorneys representing financial institutions and architects' societies, and state agencies, such as Texas Rehabilitation Commission and the Texas Department of Mental Health and Mental Retardation. The Austin chapter of the Associated General Contractors of America submitted comments that were received immediately prior to the board meeting and were not incorporated into the changes recommended by the staff. However, the suggestions will be considered and appropriate action taken at a later time. Attending the board meeting, but not submitting writ-

ten comments, were representatives of Mortgage Bankers' Association and the Texas Society of Architects.

Major comments which resulted in changes to the proposed rules are shown below, together with the board's responses thereto.

.576(e) Definitions. "Substantially renovated, modified, or altered." Organizations for the handicapped felt that definition of this term should sharply limit the kind of decor remodeling that could be included in "substantial changes." The board agreed.

.577(b)(1) Subject buildings and facilities. Organizations for the handicapped warned of the possible effect of 504 Regulations making it necessary to require that determinations of impracticality be based upon physical requirements of the work and the nature and function of the facility. The board included these criteria in the rules.

.577(b)(1) and (2). Organizations for the handicapped suggested changes in these two subparagraphs to emphasize the mandatory nature of compliance with the act. The board agreed.

.577(c)(2) Privately owned buildings, etc. Representatives of financial institutions, architects, and contractors made clear their opposition to the retroactive effect of the proposed rule and the wasteful, delaying nature of the subjective decision-making required of the board. The board agreed and adopted a more prospective rule that avoids subjective decision-making. The board also addressed the question of stage construction within this rule, since legislative inquiry showed that to have been a concern.

.579(a)(2) Review of Plans and Specifications. Representatives of financial institutions thought that the board should promptly review all plans and specifications submitted to it and set a time limit for notifying the building owner of the review results. The board agreed.

.582 Accessibility Certification and Approvals. Representatives of financial institutions felt that a time limit should be set for issuance certification in order to prevent unnecessary delays in closing commercial projects. The board agreed.

.585 Complaints and Investigations. Acknowledgment of complaint and report of investigations were felt by organizations for the handicapped to be essential to this complaint procedure. The board agreed to send a written report of the investigation, including proposed action for enforcing compliance, but felt that a written acknowledgment of the complaint was not necessary. Even though a requirement for written acknowledgment is not set out, the board will make this effort to the degree possible.

Suggested changes to the proposed rules which were not accepted for immediate adoption as a part of these rules are discussed below. Many of these proposals will be the subject of rulemaking at a later time.

One writer suggested that the "determination of impracticality" prescribed by Vernon's Civil Statutes, Article 678g, Sections 2(a) and 2(c), and set out in Rules .576(c), .577(a) and (b), and .580, should be made applicable to Article 678g, Section 2(d), *supra*, through these rules. The board felt that the "determination of impracticality" was not applicable to Section 2(d) matters.

It was suggested by another state agency that the board, through its rules, be required to consult with rehabilitation agencies prior to making impracticality determinations inasmuch as Section 20(a) of the act states that the board "shall have" the assistance of such agencies. The board needs and wants such consultation, and solicits whenever possible, but the statute does not "require" the board to do so and the rules should not expand the statutory dictates in this way. The board presently consults with rehabilitation agencies in fulfilling its responsibilities under Section 2(c) of the act. (See, also, the requirement of Article 666b, Section 6.)

Advocacy, Inc., wanted a definition of the term "improbable," since use of that term carries with it a discretionary role for the board in an area where federal law has taken a mandatory stance. Changes were made to Rules .577(b)(1) and (2) along this line, but this definition was not included.

Several comments were received concerning the time allowed for review of plans and specification, the time for conducting inspections following project completion, prompt issuance of a certificate of accessibility, procedure for handling plans and specifications after review, form of the certificate of compliance, clarification of the language in Section 2(d)(6) of the act, and other matters. Not all of these suggestions were accepted now, but the board will continue to monitor the implementation of these rules in light of these suggestions and others brought to our attention in the future, and make changes accordingly.

These rules are adopted with the changes in the text as indicated, and are promulgated under the authority of Article 678g, *supra*.

**.575. General.** The authority for the administration and enforcement of Article 678g, as amended, except as otherwise provided in Paragraph (f), Section 20, of the act, rests with the State Building Commission whose statutory authority was transferred to the State Board of Control by Senate Bill 759, Acts of the 65th Legislature, Regular Session, 1977, Chapter 766, Page 1914.

The responsibility for exercising this authority within the State Board of Control lies with the Elimination of Architectural Barriers Section of the Building and Property Services Division. These rules and regulations are established to implement and promote the state policy to eliminate, insofar as possible, unnecessary structural obstacles encountered by the aged, handicapped, or disabled persons, whose ability to engage in gainful occupations or to achieve maximum personal independence is needlessly restricted when they cannot readily use public buildings and facilities. Senate Bill 773, Acts of the 65th Legislature, Regular Session, 1977, Chapter 767, Page 1916, expanded the coverage of Article 678g to include certain private buildings in addition to the public and state leased buildings covered by the act. Administration of these rules and regulations will be to implement the state policy under statutory authority, and all decisions made in regard to the approval of buildings covered by the act shall be in the interest of eliminating unnecessary architectural barriers to the handicapped. Public officials are encouraged to assist in implementing the policy of the state through development and enforcement of local building codes and building permit regulations. A building owner's obligation to comply with the provisions of the act and the rules and regulations set out herein may not be satisfied by a simple showing of compliance with local building codes or ordinances.

**.576. Definitions.**

(a) "Act," when used in these rules and regulations, shall refer to Vernon's Texas Civil Statutes, Article 678g, as amended.

(b) "Public buildings and facilities," as used in the application of the act, shall not include those buildings and facilities owned and operated by the federal government, or which fall under the provisions of Public Law 90-480 (42 U.S.C.A. 4151, et seq.).

(c) "Determination of impracticality" shall refer to the formal process by which the governmental department, agency, or unit concerned petitions the board to rule on the impracticality of applying one or more of the standards and specifications to a building or facility referred to in Paragraphs (a) or (c), Section 2, of the act.

(d) "State agency" shall mean a board, a commission, a department, an office, or other agency of the state government.

(e) "Substantially renovated, modified, or altered," as referred to in Paragraph (a), Section 2, of the act, shall mean any structural change which alters the use, capacity, or function of a building or facility to such an extent as to permit inclusion of any one or all of the standards set forth in the act. Remodeling only for the purpose of nonstructural decor and normal maintenance repairs shall not constitute substantial changes.

(f) "Board" shall mean the State Board of Control.

(g) "Buildings and facilities" shall mean any or all portions of buildings, structures, walks, parking lots, parks, recreation areas, or other improvements to real property.

(h) "Elimination of Architectural Barriers Manual," as used in these rules, shall mean the official guide book published by the board pursuant to Rule .578.

(i) "Building owner" shall mean the person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other unit, that holds title to subject buildings or facilities.

(j) "Buildings," when used in these rules, regarding those structures referred to in paragraph (d) of Section 2 of the act, may include buildings, building elements, and improved areas.

*.577. Subject Buildings and Facilities.*

(a) Public buildings, as identified in Paragraph (a), Section 2, of the act, are subject to compliance with the provisions of the act.

(1) If public funds are used in the construction of a building at any time during the construction process, even after construction has commenced, the building or facility is subject to compliance.

(2) For purposes of this act, land donations by governmental units or any other use of public lands on which buildings or facilities are constructed shall be deemed to be funded in part by public funds even though structures on that land are constructed with private funds.

(3) Buildings constructed with private funds, but which were constructed for the primary purpose of donating or deeding to a public entity, shall be subject to compliance with the act.

(4) The board may inquire of any building owner as to the source of funding used in the construction of a building under inquiry. Absent any satisfactory evidence to the contrary, the board may presume that the subject building falls under the act.

(b) Privately owned buildings and facilities identified in Paragraph (c), Section 2, of the act that are leased or rented to state agencies are subject to compliance with the act.

(1) If it is determined by the agency that the space to be leased will not be used by the public and that the occasion for employment for the aged, handicapped, or disabled persons is improbable because of the physical requirements of the work or the nature and function of the facility, the agency shall, prior to the award of a contract, submit to the board in written form the standards it has determined to be impractical and the reasons for such determination. Information contained in the submittal should include, but is not limited to, the following:

- (A) Proposed location of the leased space.
- (B) Agency's function within the leased space.
- (C) Estimated number of daily visitors.
- (D) Estimated number of employees and description of jobs to be performed.
- (E) Total square footage within the leased space.
- (F) Number of parking spaces to be included in the contract.

The board will review the submittal and shall determine if full compliance is not practical and shall set out the standards and specifications which are considered practical. If no written determination of impracticality is submitted by an agency requiring space prior to the award of contract, full compliance with all standards and specifications of the act shall be required.

(2) Leasing contracts shall include, or incorporate by reference, the standards and specifications required by the act.

(c) Privately owned buildings and facilities, as identified in Paragraph (d), Section 2, of the act, are subject to compliance with the act.

(1) Texas Population Tables published by the U.S. Bureau of Census, including estimates for other than decennial census, will be used to determine county populations.

(2) The phrase "constructed on or after January, 1978," shall include only those buildings on which construction work was commenced on or after that date, and shall not include those buildings under construction prior to January 1, 1978.

(A) For the purpose of this subparagraph, "commencement of construction" shall be determined by visible placement of engineering stakes, delivery of lumber and/or other construction materials to the job site, erection of batter boards, and other such work that, upon inspection, would have put a person on notice that construction had begun.

(B) If submission of plans and specifications prior to commencement of construction was not possible, such plans and specifications shall be submitted for approval as soon as possible following such commencement of construction. Provisions of the act shall be adhered to regardless of the time the plans and specifications were submitted for approval.

(C) In projects or developments calling for stage construction, or where more than one building is being constructed, each stage or building shall be considered to be a separate project for purposes of this act.

(3) For privately funded buildings and facilities, the provisions of the act and the rules and regulations contained herein pertain only to new construction and are not applicable in renovation projects.

(4) The board may request assistance from county and city departments that have construction

responsibilities under local construction ordinances or building permits issuance responsibilities. Such assistance may include project design information, funding information, verification of compliance, inspection results, etc.

(d) Privately owned buildings and facilities not otherwise covered in Paragraphs (c) and (d), Section 2, of the act, are eligible for inclusion in the state's elimination of architectural barriers program if:

(1) building owners voluntarily request assistance from the board;

(2) the building owner or his authorized representative agrees to pay, if requested by the board, a fee to cover the costs of providing appropriate services. Fees shall not exceed \$100 per building or facility and shall be based on the time required to perform such services and reimbursement of related travel costs incurred; and

(3) the building owner or his authorized representative grants the board authorization to conduct on-site inspections.

#### *.578. Standards and Specifications; Manual of Specifications.*

(a) All subject buildings and facilities, as set out in Rule .577, shall conform to the standards and specifications as set forth in Sections 5 through 19 of the act until such time as the board officially substitutes standards and specifications as authorized by Paragraph (c), Section 20, of the act.

(b) The board shall develop and publish a Manual of Specifications which shall include, but not be limited to, a restatement of the specifications contained in Sections 5 through 19 of the act, any new specifications substituted therefor in accordance with the authority set out in Paragraph (c) of Section 20 of the act, and any board interpretation of the application of a particular specification in use by the board. It shall be sufficient for the purposes of enforcing any such specification or interpretation that it be included in the manual published hereunder.

(c) Even though an interpretation is included in the manual and published therein, it may not be used as a base for proceedings under Paragraph (b), Section 20 of the act until actual notice is given to the owner or his authorized agent pursuant to the provisions of Rule .584.

(d) Substituted specifications authorized by Paragraph (c), Section 20 of the act, and published in the manual, shall have the same effect for the purposes of enforcement as the specifications now contained in Sections 5 through 19 of the act.

(e) Revisions to the manual may be published from time to time to include other substitutions and such notice of revision shall be published in the *Texas Register* at least 30 days prior to implementation of the substituted specification.

#### *.579. Review of Plans and Specifications.*

(a) All project plans and specifications of buildings and facilities covered by Paragraphs (a) and (d), Section 2 of the act, shall be submitted to the board for review and approval prior to bidding and award of contract.

(1) A Certificate of Compliance or a statement of compliance intent, as prescribed by Rule .580, shall accompany all plans and specifications submitted to the board for review.

(2) After a prompt review of all submitted plans and specifications, the board will notify the building owner, authorized representative, or other appropriate parties of the results of the review within 20 working days of receipt of plans and specifications. Plans and specifications will be approved by the board only when the documents adequately reflect full compliance with all accessibility standards and specifications, or are in compliance with the standards and specifications approved on the basis of practicality as set forth in Rule .580.

(3) When project plans and specifications do not reflect satisfactory compliance with the standards and specifications, the board will request verification of plan or design revisions. Such verifications may be made by submission of revised plans and specifications or in such written form as deemed appropriate by the board. The submission of change orders and addenda may be substituted for the construction documents for purposes of verifying design revisions and/or modifications.

(4) Enforcement of the requirement to submit plans and specifications shall be in accordance with the applicable paragraphs of Rule .584.

(b) Costs of submitting and returning plans and specifications must be borne by the sender. Plans and specifications received by the board that contain prepaid return postage will be returned immediately after the review. Plans and specifications received for review which do not have prepaid return postage are subject to destruction 30 days after the date of the board's review reply unless the board is furnished with prepaid postage or receives written instructions to return the documents C.O.D. by specific carrier.

#### *.580. Submission of Compliance Intent.*

(a) All projects involving buildings and facilities covered by Paragraphs (a) and (d), Section 2 of the act, must have a Certificate of Compliance or a statement of intent to comply, submitted to the board by the building owner or authorized representative. Such documentation shall be set out on a form or forms as may be prescribed by the board and submitted with the plans and specifications prescribed in Rule .579.

(1) In accordance with Paragraph (a), Section 2 of the act, covering public buildings, if the governmental department, agency, or unit concerned shall deter-



mine, after taking all circumstances into consideration, that full compliance with any particular standard or specification is not practical, a written statement to that effect shall be submitted with the plans and specifications, together with the reasons for such a determination. The board shall decide whether in fact such standards or specifications are impractical and shall set forth in its review and approval of the plans the extent to which an attempt shall be made to comply with the standard or specification. A statement or letter of impracticality will be sent to the applicant.

(2) In accordance with Paragraph (a), Section 2 of the act, if the governmental department, agency, or unit involved determines that the entire building or facility is not open to the general public and that the occasion for employment of the aged, handicapped, or disabled persons is improbable, a statement to that effect should accompany the plans and specifications for the building or facility. The board shall render a decision on the determination made by the applicant and shall issue a statement or letter of impracticality on the entire building or facility or state the extent to which accessibility shall be required. Examples of types of buildings or facilities that may fall in this category are radio towers, utilities plants, water and sewage treatment facilities, waste handling and disposal facilities, certain type warehouse and storage facilities, boat docks, ramps, etc. Exclusion of these types of buildings and facilities will not be allowed if they contain areas of significant size and wherein administrative, supervisory, or other functions are performed that might be performed by handicapped persons.

(b) State agencies having rehabilitation functions or that extend direct services to disabled and handicapped persons may be consulted by the board when making impracticality determinations.

#### *.581. Inspections and Verifications.*

(a) The board is authorized to inspect all buildings and facilities applicable under Rule .577, to ascertain if compliance with the accessibility standards and specifications have been met.

(1) Inspections will be performed during the normal working hours of the building owner, authority, or unit concerned. Any deviation from normal working hours shall be at the convenience of the owner, authority, or unit concerned.

(2) The board's representative making an inspection will request that the building owner or a designated representative be present during the inspection.

(3) During each inspection, the board's representative will make field note entries on a form prescribed by the board for such purposes. The completed form will become part of the permanent file that will be maintained on each project and will be the source document in support of any subsequent reports, notifications, or other actions.

(4) The building owner, authorized representative, or other appropriate parties will be advised by the board of the results of each inspection within 60 days following the date of inspection.

(5) The board is authorized to verify corrections, as covered by Rule .583, by performing reinspections or by requesting documentary evidence from the building owner or his authorized representative that corrective measures have been achieved.

(6) The board is authorized to perform reinspections when it is suspected or when evidence indicates that a change in function or utility has occurred within a building or facility that might previously have been granted an exclusion based on impracticality due to function or utility.

(7) A building owner or authorized representative shall, upon request of the board, furnish the board with a statement that completely and accurately reflects compliance with the standards and specifications determined by the board as prescribed within these rules. The statement shall be in such form and contain such information deemed necessary by the board, to be able to ascertain compliance.

#### *.582. Accessibility Certifications and Approvals.*

(a) Accessibility certifications are granted by the board upon completion of satisfactory inspections or other forms of verifications deemed appropriate by the board that the buildings and facilities are in compliance with all accessibility standards and specifications.

(1) Within 10 days following satisfactory verification of compliance, a letter of certification covering each building or facility that meets all accessibility standards and specifications will be issued by the board to appropriate building owners or designated representatives.

(2) In order to promote the identification of buildings and facilities that are accessible to the handicapped, appropriate accessibility symbols shall be made available by the board. The design of the symbol shall be an adaptation of the international symbol that is used to identify barrier-free structures. Accessibility symbols may be used only on those buildings that have been properly certified by the board.

(b) Building and facility accessibility approvals will be granted by the board upon satisfactory verification that buildings and facilities are in compliance with all building standards and specifications not otherwise excluded by previous impracticality determinations as prescribed in Rule .579.

#### *.583. Corrective Modifications.*

(a) When corrective modifications to achieve compliance are deemed necessary by the board, based on inspections or other evidence of noncompliance, the board will establish a reasonable period of time in which corrections are to be made and will advise the

building owner or the authorized representative of the time limitation by written notice which will also include an itemized listing of all deficiencies. An extension of the designated period may be granted by the board if satisfactory evidence is presented to the board showing that the time specified is inadequate to perform the necessary corrections.

(b) The building owner or his designated representative shall be instructed to notify the board when modifications have been completed.

(c) All modifications are subject to verification as prescribed in Rule .581, prior to certifications or approvals by the board.

#### *.584. Enforcement Powers.*

(a) The board is authorized to institute and prosecute proceedings in district court to compel compliance with the law as provided in Paragraph (b), Section 20 of the act.

(1) No action by the board to initiate legal proceedings shall be taken until:

(A) the board has complied with Paragraph (a) of Rule .583;

(B) the appropriate official of the board has determined that compliance had not been accomplished upon expiration of the allotted period per Paragraph (a), Rule .583, and that the building owner, authority, or unit involved has not shown evidence of performing the prescribed corrections;

(C) the authority, building owner, or other appropriate persons have been given final notification by the board requesting compliance within 90 days from the date on which the notice was received. The final notice shall be issued by registered or certified mail, return receipt requested, and shall advise the party or parties involved of the failure to comply, the action proposed to be taken, the specific provisions under which the proposed action is to be taken, and the basis for the action; and

(D) the expiration of at least 90 days from receipt by the building owner of the final notice. The board shall have the authority to extend the 90-day period when circumstances justify such extension. Request for extension of time may be made by the building owner, authorized representative, or appropriate parties; however, such requests must be received by the board prior to the expiration of the 90-day period and must contain satisfactory evidence of good faith in complying.

(2) Legal proceedings are initiated by the State Board of Control by notifying the Office of the Texas Attorney General of the specific violations of the provisions of the act and presenting evidence to that department that all procedures previously taken to effect compliance have not resulted in compliance.

(3) The board will maintain all documents, materials, and other evidence on file for use in support

of any legal action taken and shall be open to examination by all parties involved.

(b) The board is authorized to enforce the provisions of the law pertaining to lease facilities covered under Paragraph (c), Section 2 of the act, as set out within this rule or under the appropriate provisions of Vernon's Texas Civil Statutes, Article 666b.

#### *.585. Complaints and Investigations.*

(a) Any person or persons who suspect that any building or facility should be, but is not, in compliance with provisions of the act may submit a complaint to the board with the request that an investigation of non-compliance be made. Complaints must be in written form and must contain information sufficient to initiate investigative procedures. The information should include, but is not limited to:

(1) The name of the building owner or authority.

(2) The name and address of the building or facilities in question.

(3) The name of the person or persons who might be responsible for the operation of the building or facilities, if other than the building owner.

(4) Available historical data relative to the age of the building or facilities, suspected additions or renovations, proposed or current construction work, and funding of previous construction projects.

(5) An itemized list of suspected violations of the act.

(6) The name and address of the person or persons issuing the complaint.

(b) The board will make a prompt investigation when a compliance complaint contains sufficient information to indicate a probable failure on the part of a building owner to comply with the provisions of the act. The investigative procedures of the board may include on-site inspections, solicitation of information from the building owner or authority, or from whatever other sources deemed appropriate by the board.

(c) All administrative and enforcement procedures contained within these rules and regulations shall be followed during the investigation process and any subsequent action that may be taken.

(d) The board shall make a report to the person(s) who filed the complaint within a reasonable time after its investigation of the building or facility. This report shall contain a summary of the board's findings. If the complaint is determined to be justified, the report shall also contain a statement of the board's plan of action for enforcing compliance.

## Building and Facility Accessibility for the Handicapped 029.03.01-.09

The Texas State Board of Control, acting through the authority of Vernon's Texas Civil Statutes, Article 678g, as assigned to it under Senate Bill 759, Acts of the 65th Legislature, Regular Session, 1977, Chapter 766, page 1914, Vernon's Texas Civil Statutes, Article 678m.1, has repealed State Building Commission Rules 029.03.01-.09, relating to building and facility accessibility for the handicapped.

Repeal of these rules is authorized under Article 678g supra. See the November 8, 1977, issue of the *Texas Register* (2 TexReg 4263), for an outline of the repealed rules, or contact Douglas Lawson, Elimination of Architectural Barriers Section, Building and Property Services Division, State Board of Control, P.O. Box 13047, Austin, Texas 78711, telephone (512) 475-2622, for a full text.

Issued in Austin, Texas, on December 12, 1977.

Doc No 776959      Homer A. Foerster  
Executive Director  
Texas State Board of Control

Effective Date January 2, 1978

For further information please call (512) 475-5966

## Texas Department of Health

### Athletic Trainers

#### General Requirements and Guidelines on Athletic Trainers 301.81.01

The Texas Department of Health has adopted a rule on continuing education for athletic trainers for the purpose of establishing a minimum requirement for updating athletic trainers on current methods of treatment in their profession. The department received no comments or suggestion for changes to the proposed rule, however, words were added for clarity. This rule is promulgated under authority of Texas Civil Statutes, Article 4512(d).

##### .008. Continuing Education.

(a) All licensed athletic trainers, starting in January of 1978, must fulfill the following continuing education requirements in order to maintain their licensing status:

(1) They must attend an approved course or clinic at least once every three years (i.e., course, clinic,

meeting, etc., must be one which is approved by the board constituting a minimum of two days--six hours per day).

(2) A course of one day can be approved but will only fulfill one-half of the necessary requirements.

(b) It will be the licensed athletic trainer's responsibility to remit proof of attendance to the executive secretary within one month after attendance. Those licensed athletic trainers failing to fulfill these requirements will be required to explain to the board their failure to comply. The board will decide whether to:

- (1) grant an extension of this period, and/or;
- (2) suspend the license, and/or;
- (3) require the individual to satisfactorily complete the state licensing exam.

Issued in Austin, Texas, on December 12, 1977.

Doc No. 776982      Raymond T. Moore, M.D.  
Deputy Commissioner  
Texas Department of Health

Effective Date January 4, 1978

For further information, please call (512) 458-7296

## Water Hygiene

### Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems 301.83.01

The Texas Department of Health has adopted the subject standards as published in the *Texas Register* on October 18, 1977.

As a result of receiving comments from two individuals regarding Rule .003(g)(3)(A), it was decided to accept the recommendations that a portion of the rule be deleted. Therefore, the requirements for the issuance of status reports within 48 hours after violations of maximum contaminant levels, failure to use the prescribed treatment techniques, or perform the required monitoring was deleted from the department's standards. Another revision was made in Rule .003(f), interchanging subsection .003(f)(5) with .003(f)(6) for the purpose of providing better continuity and clarification of the narrative. The overall purpose of Rule .003(f) remains unchanged.

These amendments are adopted under the authority of Texas Civil Statutes, Article 4477-1.

.002. Definitions. The following definitions shall apply in the interpretation and enforcement of these standards:

(a) "Public water system" means any system for the delivery to the public of piped water for human consumption, if such a system has four or more connections or regularly serves at least 25 individuals daily at least 60 days out of the year. Such term includes:

(1) any collection, treatment, storage, and distribution facilities under control of the operator of such system, and

(2) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(j) "Status report" means written public notification issued by a supplier of water whenever the supplier's system fails to comply with a maximum contaminant level, is granted a variance or exemption from a maximum contaminant level, or fails to comply with a schedule for contaminant levels prescribed pursuant to a variance or exemption.

*.003 Standards of Chemical and Radiological Quality.* All analyses to determine compliance shall be performed by laboratories approved by the department. Analyses shall be performed on treated water as furnished to the customer.

(e) Verification of excessive chemical level.

(1) When the results of a chemical analysis indicate that the level of any constituent except nitrate exceeds the maximum allowable level, at least three additional samples shall be collected within one month of notification to the department. The four analysis results shall be averaged to determine if the water served to the public exceeds the maximum allowable level.

(2) When a level exceeding the maximum allowable level for nitrate is found, a second analysis must be initiated within 24 hours of receipt of notification. If the mean of the two samples exceeds the allowable level, the supplier of water must report to the department and notify the public, in accordance with .003(g).

(f) Variances and exemptions.

(1) "Variance" means an exception to one or more of the maximum allowable levels which is necessary because the condition of the system's raw water is such that the maximum allowable level cannot be met despite the application of the best available treatment techniques (taking costs into consideration) subject to the following conditions:

(C) A schedule, including increments of progress, is established to bring the system into compliance with the standard in question.

(5) The department is required to act upon all requests for variances or exemptions within a reasonable time period, not to exceed 90 days.

(6) Procedures for public comment and public hearings on variances, exemptions, and compliance

schedules, as a condition of a variance or exemption, will be as stated in the EPA National Interim Primary Drinking Water Regulations, *Federal Register*, Wednesday, December 24, 1975, Part IV.

(g) Public notification requirements.

(1) Status reports are required of any public water supply systems which:

(A) violates maximum levels,

(B) fails to use prescribed treatment techniques,

(C) is granted a variance or exemption,

(D) fails to comply with a variance or exemption schedule, or

(E) fails to perform required monitoring.

(2) Status reports shall conform to the following requirements:

(A) Notices given shall be written in a manner reasonably designated to inform fully the users of the system.

(B) Notices shall be conspicuous and shall not use unduly technical language, unduly small print, or other methods which would frustrate the purpose of the notice.

(C) Notices shall disclose all material facts regarding the subject, including the nature of the problem, and where appropriate, a clear statement that a primary drinking water regulation has been violated and any preventive measures that should be taken by the public.

(D) Bilingual notice shall be given where designated by the department.

(3) Status reports required under .003(g)(1) must be issued as follows:

(A) With the next water bill or by written notice if water bill is issued quarterly or not issued at all, and quarterly thereafter.

(B) In such other form as may be prescribed by the department, including posting of conspicuous notice for noncommunity systems.

(C) In the case of a failure to comply with a maximum contaminant level which is not corrected promptly after discovery, the supplier of water must give other general public notice of the failure, in addition to notice by direct mail, in a manner specified by the department. Such notice may consist of newspaper advertisement, press release, or other appropriate means.

*.005. Maximum Bacteriological Contaminant Levels.*

(a) The maximum contaminant levels for coliform bacteria, applicable to community water systems and noncommunity water systems, are as follows:

(1) When the membrane filter technique is used, the number of coliform bacteria shall not exceed any of the following:

(A) One per 100 milliliters as the arithmetic

mean of all samples examined per month.

(B) Four per 100 milliliters in more than one sample when less than 20 are examined per month; or

(C) Four per 100 milliliters in more than five percent of the samples when 20 or more are examined per month.

*.008. Inorganic Chemical Sampling and Analytical Requirements.*

(e) For the initial analyses required by paragraphs .008(a), .008(a)(1), .008(a)(2), or .008(b)(3) of this section, data for surface waters acquired within one year prior to June 24, 1977, and data for ground waters acquired within three years prior to June 24, 1977, may be substituted at the discretion of the department.

*.009. Organic Chemical Sampling and Analytical Requirements.*

(d) For the initial analysis required by .009(a), .009(a)(1), and .009(a)(2) of this section, data for surface water acquired within one year prior to June 24, 1977, and data for ground water acquired within three years prior to June 24, 1977, may be substituted at the discretion of the department.

*.012. Approved Laboratory*

(a) All samples for chemical, radiological, or bacteriological analysis must be submitted to a laboratory approved by the department, with the exception of turbidity and any control tests, such as chlorine residual, alkalinity, and pH, which are not used to determine compliance with these standards. Such control tests may be run in the plant laboratory. Methods of analysis shall be as specified in 141.21(a) (microbiological), 141.22(a) (turbidity), 141.23(f) (inorganic), 141.24(e) and (f) (organics), and 141.25 (radionuclides) of the EPA National Interim Primary Drinking Water Regulations, *Federal Register*, Wednesday, December 24, 1975, Part IV, and Friday, July 9, 1976, Part II (radionuclides), or by any alternative analytical technique as specified by the state and approved by the administrator under Section 141.27 of the EPA regulations.

(b) The department of health adopts by reference the federal regulations referred to in Rule .012(a) above. Section 141.21(a), 141.22(a), 141.23(f), 141.24(e) and (f), and 141.27 are in the *Federal Register*, Part IV, Wednesday, December 24, 1975, and Section 141.25 is in the *Federal Register*, Part II, Friday, July 9, 1976.

*.013. Record Keeping and Reporting Required of Water Systems.* Any owner or operator at a public water system subject to the provisions of this part shall retain the water system premises or at a convenient location near the premises the following records:

(e) Any owner or operator of a public water system subject to the provisions of this part is required

to report to the state the results of any test, measurement, or analysis required to be made by these standards within 40 days following such test, measurement, or analysis.

*.016. Exceptions to These Standards.* These standards shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) obtains all of its water from, but is not owned or operated by, a public water system to which such standards apply;

(c) does not sell water to any person; and

(d) is not a carrier which conveys passengers in interstate commerce.

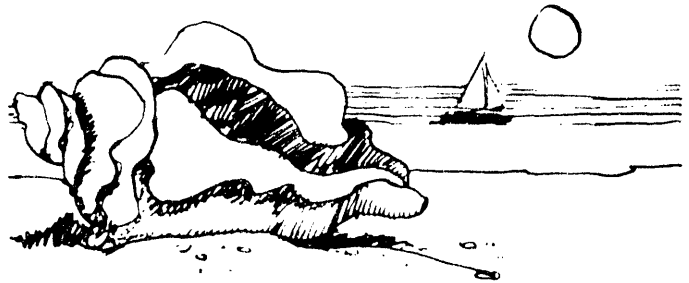
Issued in Austin, Texas, on October 4, 1977.

Doc No 776979

Raymond T. Moore, M.D.  
Deputy Commissioner  
Texas Department of Health

Effective Date November 17 1977

For further information please call (512) 458 7497



## State Department of Highways and Public Transportation

### Maintenance Division

#### General 101.18.01

Under the authority of Texas Civil Statutes, Article 6701d, the State Department of Highways and Public Transportation has amended Section (a) of Rule 101.18.01.001 to read as follows:

**.001. Uniform Traffic Control Devices.**

(a) The *Texas Manual on Uniform Traffic Control Devices for Streets and Highways*, Volume 1, as amended in December, 1976, and Volume 2, as amended in September, 1977, which are filed with this rule and hereby incorporated by reference, were prepared, as required by law, to govern standards and specifications for all such traffic control devices to be erected and maintained upon all highways within this state, including those under local jurisdiction.

Issued in Austin, Texas, on December 13, 1977.

Doc. No. 777008     **Bobby Dell Adcock**  
                                  Chief Minute Clerk  
                                  State Department of Highways  
                                  and Public Transportation

Proposed Date of Adoption: January 3, 1978

For further information, please call (512) 428-1150

## Texas Department of Human Resources

### Child Welfare Services 326.50

#### Notice of Repeals

The Texas Department of Human Resources has repealed existing Child Welfare Services rules, while simultaneously adopting their replacement with new rules.

Following is a list of the rules repealed, including the subchapter title, rule code numbers, and docket numbers.

**Legal Base for Child Welfare Services**

326.50.71.001-.009

Doc. No. 776984

**Protective Services for Children**

326.50.72.001-.028

Doc. No. 776986

**Legal Processes for Child Protection through the  
Court**

326.50.73.001-.026

Doc. No. 776989

**Protective Services and the Community**

326.50.74.001-.004

Doc. No. 776991

**Substitute Care**

326.50.75.001-.040

Doc. No. 776993

**Adoption Services**

326.50.76.001-.029

Doc. No. 776995

**Out-of-Town Inquiries**

326.50.77.001-.006

Doc. No. 776997

**Interstate Placement of Children**

326.50.78.001-.014

Doc. No. 776999

**Suits Affecting the Parent-Child Relationship**

326.50.79.001-.002

Doc. No. 777001

**Support Documents**

326.50.99.001-.002

Doc. No. 777003

The Texas Department of Human Resources adopts the following rules about Child Welfare Services as proposed in the November 1, 1977, issue of the *Texas Register* (2 TexReg 4169). Complete replacement of these rules was proposed because of the extensive reorganization and clarification involved.

Title IV-B of the Social Security Act provides funds for services to abused, neglected, and exploited children. Services are also provided for other children in need of protection such as juvenile-age children in need of supervision, certain truant and runaway children, and juvenile-age unmarried parents.

No comments were received on the proposed rules. However, after the comment period, one comment was received from a Legal Aid Association questioning the implementation of the rules in general terms in light of the *Sims v. Department of Public Welfare* case. The comment did not specify which rules should be used in lieu of that published in the proposed rules. The department is in the process of reviewing a proposed judgment drafted by the plaintiff's attorneys in the *Sims* case. The department will reevaluate its rules and procedures whenever the final order is entered in the *Sims* case.

Minor technical and language changes have been made for the purpose of further clarification.

### Legal Base for Child Welfare Services

326.50.71

These rules have been approved by the Texas Board of Human Resources and are adopted under the authority of Texas Civil Statutes, Articles 695a and 695c.

**.010. Confidentiality of Child Welfare Records.**

(a) Reports, records, and working papers used or developed in a protective services investigation, foster or adoptive home study, out-of-town inquiry (OTI), social study for the court, or any other case-related ac-

tivity are generally confidential and cannot be released except when allowed by specific policy or statute. Confidential information that may be released:

(1) Release of information to the court, district attorney, law enforcement officials, and appropriate DHR staff, including supervisory, administrative, and special investigation staff. The court is entitled to total case and fiscal records on families and children that DHR is serving who are under the continuing jurisdiction of the court. While testifying in a protective services case, DHR staff must not identify the complainant unless the judge specifically orders this or the complainant consents to this.

(2) Release of information to appropriate military personnel. Information may be released to military personnel for the purposes of the worker entering and investigating protective services complaints on the military base and the military establishing a national registry to be used on military bases. This information may be released only when the military base has given the protective services unit an official letter saying specifically what information they want, how the information will be used, and to whom the information should be released.

(3) Release of information to relatives, foster parents, adoptive parents, volunteers, and contract service agency staff. Select information may be given to relatives and foster parents about the child placed with them to enable them to serve the child. Full information about the child and his family should be given to adoptive parents. Information may be given to contract service agencies and volunteers that provide services to protective service clients to enable them to serve the client. The case record itself is never given to relatives, foster or adoptive parents, contract agency staff, or volunteers.

(b) All information about a person must be released to that person unless the information falls into specific exceptions.

(1) Process for release of information. All requests from parents, the child, their authorized representative, or the general public for disclosure of protective service case information must be made in person. The person makes the request by completing a Request for Records of Texas Department of Human Resources. Foster home or adoptive applicants or parents who request information from their case record must complete the form. Requests will be referred to the local staff person designated by the regional administrator to handle requests under the Open Records Act. The supervisor or program director responsible for the case must approve the release of information.

When information is approved for release, the person authorized to see the information must look at it in the office. The person may take notes but neither the case folder nor its contents may be removed from the office.

A staff person should be present to answer questions and oversee the review.

If there are questions about the confidentiality of information requested in the form, the form and the case folder with a memorandum stating any comments or other information on the matter must be forwarded to the assistant commissioner for Coordination, State Office. If necessary, the legal staff will determine if DHR can honor the request. In some cases, the Legal Division may submit the request to the attorney general for an opinion. When a decision is made, it is forwarded to field staff. The person making the request should be told immediately what the answer is. The Open Records Act permits a governmental agency 10 days to request a determination from the Attorney General's Office when necessary. It is therefore necessary that requests be handled without delay.

(2) Exceptions: Some kinds of information are confidential from the person the record is about.

(A) The name and other identifying information about the complainant must be struck from information given to the parents, the child, their authorized representative, or the general public.

(B) References for adoptive home studies are confidential when they are contained in consummated adoption records.

(C) Protective services case records or foster or adoptive home studies are confidential when criminal or civil litigation involves DHR and the county or district attorney, assistant attorney general, or other attorney who is representing the department in the litigation has determined that the information should be withheld.

(D) That information in consummated adoption records which directly indicates adoption or concerns the adoption proceedings. This information can be obtained only through an order from the court which issued the decree or from a district court of Travis County. Good cause for release of the information must be shown to the court. DHR staff can give to the person seeking the information that information which would help him to petition the court. Information in consummated adoption records which does not pertain to the adoption itself, such as medical or education information about the child, may be released to the person the information concerns.

(E) Reports from other agencies which the other agency considers confidential (medical, psychiatric, psychological, educational, and social services) should be referred to the assistant commissioner for Coordination to determine whether the information is releasable. If it can be released, local staff should contact the other agency to see whether they consent to the release of information or want such reports returned to them. If the assistant commissioner for

Coordination determines that the information cannot be released, DHR staff can give identifying information about the report so that the person requesting the report can contact the agency or person issuing the report.

(F) There may be situations in which it is questionable whether information concerning other individuals or other family members may be released to the individual requesting the record. Unresolved questions or problems concerning confidentiality should be referred to the assistant commissioner for Coordination.

(3) Reports, records, and working papers may be released when requested from a social or medical agency working with the family and when accompanied by an authorization for release of information signed by the parents. The authorization must be maintained in the client's folder at all times. If the family refuses to sign an authorization for release of information and the release of information is necessary to the delivery of protective services, the information may be released with supervisory approval and documentation of the situation in the case narrative dictation. When information is released, only that which pertains to work performed or purchased by DHR will be supplied. The names of other agencies or persons (other than the complainant) knowing of the family or having worked with the family may be revealed so that the requesting agency or professional person will know about other sources of information.

*.011. Consent for Medical Care.*

(a) Consent for medical care may be obtained from the parent or managing conservator. If they cannot be contacted and actual notice to the contrary has not been given by the parent, consent may be obtained from a grandparent, an adult sibling, an adult uncle or aunt, any adult or educational institution having proper written authorization, to consent, any court having jurisdiction of the child, or the child if certain conditions are met. The Texas Family Code and Supreme Court decisions contain basic provisions for consent to medical treatment of a minor.

(b) A state participating in Titles XIX and XX family planning programs may not require minors to get parental or guardian consent for family planning services. DHR therefore provides and allows minors to get contraceptive services (other than sterilization) if the minor is in DHR's conservatorship, is eligible for Titles XIX or XX, and voluntarily requests the services.

*.012. Title IV-B Projects.*

(a) Title IV-B funds are used to add to existing services in the community and to encourage communities to provide new or further services to children when local funding for needed services is insufficient. Any planned use of Title IV-B Project funds that is not

consistent with the current guidelines must have prior approval from the Protective Services for Children Division, State Office.

(b) An agreement must be developed with each provider in each Title IV-B Project. The agreement must specify the respective responsibilities of DHR and the provider. The contents which must be included in the agreement are given under the specific program items. The agreement must be consistent with the project's guidelines. In addition, each agreement must contain the following statement: "The provider agrees to report to DHR within 24 hours all instances of suspected child abuse and neglect." Before delivery of services, the agreement must be completed and signed by DHR and the project provider and approved by the regional director for social services or designated regional Title IV-B coordinator. A Vendor Identification Number form, must be completed when the agreement is signed if the provider does not have a comptroller's vendor identification number. Each region must keep a file of the provider agreements. The agreement must be completed even when the provider is certified by DHR.

(c) Review and evaluation of the projects are an on-going, joint responsibility of the region and the Social Services Branch. The major basis of review and evaluation of the projects will be a study of the written agreements, billing and payment records, and utilization records. Field visits will be made to each of the regions during the year to review the Title IV B provider agreements. The review will include on site visits to providers and case reading.

*.013. Eligibility for Protective Services for Children.*

(a) All children and their families in need of protective services may receive these services without regard to income when the need for protective services is documented. For directly delivered protective services, a worker documents the need for services by completing and filing in the case record the Child Protective Services: Intake and CANRIS Report. Need must be redetermined every six months for services to continue. Redetermination of need is documented by case recording when completed.

(b) In purchase of service contracts serving clients in need of protective services, the criteria for eligibility and the way eligibility is determined differ by the service given. The criteria for eligibility and methods of determining eligibility by type of service are as follows:

(1) Purchased Emergency Shelter, Community Treatment Services, Emergency Homemaker Services, and Protective Day Care are given without regard to income to all clients needing them who are in open protective services cases. A DHR worker determines eligibility by indicating on the report form a need for protective services. The worker authorizes the client to



receive the purchased service by completing the Eligibility for Services without Regard to Income form which is given to and kept by the contract service agency. The worker must reauthorize services on the form every six months for services to continue.

(2) Purchased Services for Juveniles are given without regard to income to abused, neglected, or exploited children, or children at risk of abuse, neglect, or exploitation. The contract service agency documents eligibility by completing the eligibility form before beginning services and every six months if services are to continue.

(3) Purchased Services for Unmarried and/or School-Age Parents are given to clients who need them without regard to income. The contract services agency documents eligibility by completing the eligibility form before beginning services and every six months if services are to continue.

*.014. Right To Refuse Services.* Protection of children is a legally mandated service. The parents' absence, willingness, or unwillingness to work with DHR does not change DHR's responsibility to protect children. Clients do not have the right to refuse services given by DHR staff. Purchased services are offered on a voluntary basis.

*.015. Eligibility of Protective Services Clients for Other Social Services.* Protective services clients who are also AFDC or SSI recipients, MAO income eligible, or otherwise income eligible must be provided any services, including social, medical, food stamp, and financial services, for which they apply, are found eligible, are able to take advantage of the service, and the service is available in the community.

Doc No 776985

## Protective Services for Children

326.50.72.012

The Department of Human Resources has withdrawn from consideration its proposed adoption of Rule 326.50.72.012, which appeared in the November 1, 1977, issue of the *Register* (2 TexReg 4169).

Doc No 776987

326.50.72.029-.059

These rules have been approved by the Texas Board of Human Resources and are adopted under the authority of Texas Civil Statutes, Articles 695a and 695c.

*.029. Abused and Neglected Children.*

(a) Protective services for abused and neglected

children include: responding to reports and substantiating evidence of abuse or neglect of children under the age of 18; helping families recognize the causes of abuse or neglect and strengthening family ability to provide acceptable care; or, if that is not possible, bringing the situation and relevant data to the attention of appropriate courts or law enforcement agencies; and protective placement and care of children if necessary and authorized by the court.

(b) Child abuse and neglect investigations are made only of situations of children after birth. Also, a suit affecting the parent-child relationship can be filed before a child's birth when the parents want to give up the child for adoption.

(c) Abuse is defined by DHR as nonaccidental infliction or threat of infliction of physical injury or emotional or mental damage to a child by a person responsible for the child's health or welfare. Abuse is usually corroborated by medical, psychiatric, or psychological personnel.

(d) Exploitation of a child exists when the child is forced or unduly encouraged to participate in activities detrimental to his well being by a person responsible for the child's health or welfare.

(e) Sexual abuse of a child exists when any non-accidental sexually oriented act or practice by a person responsible for the child's health or welfare threatens or harms the child's physical, emotional, or social development.

(f) Neglect is defined by DHR as the person responsible for the child's health or welfare nonaccidentally depriving a child of the life necessities which provide the minimally adequate physical and emotional requirements for life, growth, and development.

(g) Medical neglect may not be considered in the following instance: "A parent or guardian legitimately practicing his religious belief who thereby does not provide specified medical treatment for a child for that reason alone shall not be considered a negligent parent or guardian; however, such an exception shall not preclude a court from ordering that medical services be provided to the child where his health requires it."

(h) "A person responsible for the child's health or welfare" refers initially to parental responsibilities for the health and welfare of the child, which include protecting him from harm perpetrated by other persons. If it is determined that parents are not responsible for the abuse or neglect, the worker must assess the responsibility of the person standing in for the parent when the abuse or neglect occurred, such as school employees, foster or adoptive parents, relatives, day care center employees, etc. When a child is harmed by someone not responsible for his health or welfare, and negligence on the part of the parent is not found, the situation is not one of abuse or neglect, but rather is

referred to a law enforcement agency for appropriate action.

(i) If the alleged person responsible for the (abused or neglected) child's health or welfare is a minor, the worker must investigate to determine whether the minor has been neglected or exploited in being given this type or amount of responsibility by the parent or person responsible for the minor. A child under the age of 10 will seldom be determined to have abused or neglected another child, because a child under age 10 is not old enough to be responsible for his actions or for the health and welfare of another person. When a child harms another child, the worker must decide whether the parents or persons responsible for each child have neglected each child.

(j) DHR provides voluntary protective placements of children only for the purpose of preventing abuse or neglect. DHR does not provide voluntary protective placement unless the child would be potentially abused or neglected, unless the placement is made.

*.030. Truant and Runaway Children* The department provides protective services for children who violate the compulsory school attendance law on three or more occasions. Protective services are also provided for children who are reported for absence from the home, for a substantial length of time or without intent to return on three or more occasions without the consent of the parent or guardian.

*.031. Children in Need of Supervision (CHINS)*

(a) DHR provides protective services for children ages 10 through 17 who are referred to DHR by the court, or by others concerned for the youth's need for supervision to divert him from the criminal justice system. CHINS offenses include status offenses and misdemeanor offenses punishable by fine only.

(b) The status offender is a subcategory of CHINS. Status offenders are children who come to the attention of the juvenile justice system for behavior that would not be considered criminal if committed by an adult. Status offenses include truancy, runaway, simple possession of alcohol, possession of inhalents where local ordinance prohibits possession by minors and not by adults, and curfew violations.

*.032. Unmarried or School-Age Parents*

(a) DHR provides protective services for unmarried parents, of any age, and for school-age parents under age 21, whether married or not, who need assistance in planning for the birth, care, and rearing of their child, as a preventive measure and service against child abuse and neglect of the child. Unmarried or school-age parents with one or more children may be high-risk and may need protective services to prevent or remedy sexual abuse of themselves or abuse or neglect of the child, or as an unmarried or school-age parent, AFDC mothers, age 10 to 21, have been iden-

tified as one group for whom protective services may be needed to prevent or remedy sexual abuse and/or neglect.

*.033. Receipt of Report of a Child in Need of Protective Services*

(a) The report of a child in need of protective services can come from any source through any media at any time. The complainant should make an oral report immediately upon learning of a child in need of protection.

(b) DHR receives reports for emergency protective services 24 hours per day, seven days per week. The complainant may make the report to DHR's Child Abuse Hotline or to local staff in each county. Local staff receiving emergency reports may be on duty, on call, or available through an answering service.

(c) DHR and the Texas Department of Health cooperate to carry out Section 34.02 of the Texas Family Code which requires that deaths of children from abuse or neglect be referred to designated officials.

(1) If DHR does not have a CANRIS report of the child's death, the Protective Services for Children Division, State Office, will refer the report to the local office for investigation to determine if there are other children in the home who need protection and if the child died of abuse or neglect.

(2) DHR must treat as reports of abuse or neglect situations of or deaths from abuse or neglect published in the newspaper, on TV or radio, but not reported to DHR.

(3) Staff must report the death of every child reported to DHR, or in an open protective service case, to the office of the deputy commissioner for Operations, with a copy of the report to the Program Manager, Protective Services for Children Division, State Office.

*.034. Child Abuse Hotline*

(a) DHR has a Statewide Child Abuse Hotline which is a toll-free telephone system for 24-hour reporting of children in need of protection. All reports of abuse or neglect received by the hotline are referred to local protective services staff, except when insufficient information is given to locate the child or when the complainant says the child does not need protection after discussing the child's situation with the hotline operator. The hotline cannot screen out any abuse or neglect referral except these two types.

(b) After receiving a telephone report about a child in need of protective services, the hotline operator must telephone local staff. This is done immediately when a child's life may be in danger, regardless of the time the report is received. In a nonemergency situation, the hotline telephones the report to local staff at the beginning of the next regular work day. Im-

mediately after the telephone referral, the hotline staff sends a report to local staff in a sealed envelope.

(c) The responsibility for screening reports lies with local staff. They must make a full investigation of all appropriate referrals, including a Child Abuse and Neglect Report and Inquiry System (CANRIS) report. Within 30 calendar days, local staff must return the Child Abuse Hotline Follow-Up Report to the hotline staff giving the disposition of the investigation. Because of its confidentiality, the report must be returned in a sealed envelope.

*.035. Clarification of Report of a Child in Need of Protective Services.*

(a) When a report is received of a child in need of protection, the worker must try to get full information on the situation from the complainant. The complainant must be encouraged to give his name, although anonymous reports are accepted and investigated thoroughly since a complainant may not want to give his name because he fears retaliation. The complainant should understand that his identity will not be revealed to the parents, but it may be given to the county or district attorney if legal intervention is necessary to protect the child. The complainant's willingness to testify in court, if necessary, should be determined.

(b) Intake staff must record the report. They should respond to the complaint as follows:

(1) If the complaint obviously does not fall within DHR's protective services responsibility, the worker should refer the complainant to an appropriate source by giving information about community resources, helping the individual select an appropriate resource, and making an appointment with the resource, if necessary.

(2) When the worker questions whether the complaint falls within DHR's protective services responsibility, he must check previous DHR records and discuss the case with the supervisor. If the supervisor approves, the complainant may be referred to a more appropriate resource.

Any time further contact or activity, beyond receiving information from the complainant or checking with the supervisor, is required to determine the appropriateness of DHR's intervention, the worker must investigate to determine whether the child needs protective services. All reports or referrals indicating a possible need for protective services must be investigated.

(3) When a report or referral is investigated, the following steps are required:

(A) A case is opened.

(B) Immediately upon taking a complaint appearing to involve abuse or neglect, a report and inquiry is made to the Child Abuse and Neglect Report and Inquiry System (CANRIS) by telephoning the designated telecommunications terminal.

(C) All cases which are not reported to CANRIS must be registered into the SSMS.

(c) The supervisor must approve action taken by the worker on every report of a child in need of protective services. The worker's action and the supervisor's approval must be recorded in case narrative.

*.036. Child Abuse and Neglect Report and Inquiry System (CANRIS).*

(a) The Texas Family Code requires that DHR provide a central registry of child abuse and neglect reports. This requirement is fulfilled through the DHR's Child Abuse and Neglect Report and Inquiry System (CANRIS). CANRIS is an automated system which receives reports of child abuse and neglect and collects and stores confidential information in the central registry. The registry is computerized for immediate retrieval of information about previous incidents. De-identified CANRIS information is entered periodically for statistical and research purposes into a national child abuse and neglect central registry provided by the National Study on Child Abuse and Neglect Reporting.

(b) Only authorized DHR staff may make inquiries and reports to the CANRIS system. Other than specific changes made in this rule, an inquiry cannot be made into CANRIS unless a report is made.

(c) The worker must report all reports of abuse and neglect to CANRIS. Even though the case may be active at the time the report is received, the new report must be entered into the CANRIS system. When the death of a child due to abuse or neglect is reported to DHR, a CANRIS report must be made of the child's death. This CANRIS report should include the situation of any living children in the home.

(d) The worker must make an inquiry about previous incidents on all reports he has made to CANRIS, unless the case is currently active and the information has already been received. When the report of child abuse or neglect is received, the worker immediately makes a report and inquiry through CANRIS by calling a telecommunications site. A CANRIS Feedback Report will be printed by the computer from information supplied via the telecommunications site. The form is then mailed to the worker for updating, correcting, or filing. The worker must update the CANRIS report:

(1) during the investigation to enter information which necessitates another inquiry;

(2) at the end of the investigation to report the findings of the investigation;

(3) as soon as a family moves, if they do so before the investigation is completed;

(4) as soon as court action about the child or family is completed, if the court has not made its decision by the end of the investigation.

(e) Identifying information on persons in closed-intake invalid CANRIS reports will be automatically

removed from the CANRIS computer files six months after the date of the finalization of the report. Identifying information on persons in CANRIS reports determined to be valid, potential, uncertain, or family moved will be automatically removed from the CANRIS computer files when the youngest child reported in the case has reached age 18.

(1) Invalidated is defined as a case in which abuse or neglect has been clearly ruled out.

(2) Validated is defined as a case in which actual abuse or neglect has been substantiated.

(3) Uncertain is defined as a case in which actual abuse or neglect cannot be substantiated or clearly ruled out, but there is enough evidence from the investigation to establish a reasonable doubt that there may be abuse or neglect.

(4) Potential is defined as those cases where actual abuse or neglect cannot be substantiated but there is sufficient evidence to identify that abuse or neglect is likely to occur as a result of existing conditions in the home which threaten the child's physical or emotional well-being.

(5) Moved is defined as a case where the family moved before any of the above dispositions were made.

(f) The DHR Investigation Division may make inquiries about child abuse and neglect cases referred to them providing assistance to protective services staff. If the Investigation Division becomes aware of an unreported case of abuse or neglect, it will refer the case to the appropriate protective services regional staff who must report the incident to CANRIS and coordinate the investigation. The Special Services Division may also make inquiries to CANRIS when there are out-of-state inquiries about abuse or neglect incidents.

(g) If licensing or social services staff suspect, during the course of a foster home or licensing study, that the family or individual may have been involved in an abuse or neglect situation in the past, they may request a CANRIS inquiry on the family or individual.

(h) The decision about intervention by DHR may be shared with an agency or professional person making the report. Protective services staff should make themselves available to physicians or professional persons in hospitals, clinics, or schools who ask for information in CANRIS. The worker should explain to the professional person that it is necessary to enter a report of abuse or neglect before inquiry information can be obtained. The worker should also discuss with the professional person whether the inquiry without a report would place the professional person in violation of the mandatory reporting law. The worker must verify the identity of the professional person before releasing confidential information. If the professional person does not make a report, the worker and supervisor must evaluate the possibility of abuse or neglect in the case,

based on the information gained. If they believe a potential danger to the child exists, the worker must make a CANRIS report and further inquiry into the situation.

(i) Cases reported for truancy, runaway behavior, juveniles in need of supervision, unmarried and school-age parents, or death of a child are not reported in the CANRIS system unless the child's situation appears to involve abuse or neglect.

### 037 Investigation of Reports of Abuse or Neglect

(a) When a report falls within DHR's protective services responsibility, the worker must investigate to determine whether the child needs protective services. The investigation is made in a nonaccusatory and nonpunitive manner. Protection will be provided for the child when needed. The investigation should be completed within 30 days, if possible.

(b) Priorities for how quickly to start the investigation are based on the seriousness of the child's situation. If the report indicates that the child's life or safety is, or possibly is, in danger, or that he may be injured, the worker must start the investigation within 24 hours to determine the nature and extent of harm to the child and the steps which must be taken to protect him. The worker records on the report form whether the child's life or safety is possibly in danger.

(c) If the report indicates that the child's life is not in immediate danger, but he is not receiving adequate child care, the worker must start the investigation within seven days.

(d) If local staff cannot investigate all reports of abuse or neglect, or cannot investigate all reports within the time limit required above, the protective services supervisor must request help from DHR's Investigation Division or from local law enforcement. The protective services supervisor should request help from the Investigation Division when that expertise is needed to protect the child.

(e) All reports indicating a possible need for protective services must be investigated. In the investigation of a report of abuse or neglect, the worker must determine:

(1) the type of abuse or neglect, effects on the child, and probable cause, if abuse or neglect is found;

(2) the person apparently responsible for the abuse or neglect, if abuse or neglect is found;

(3) the names and conditions of the other children in the home;

(4) an evaluation of the parents or other people responsible for the health and welfare of the child;

(5) the adequacy of the home environment in relation to protection of the child;

(6) any action needed to protect the child.

(f) To determine the above information:

(1) The worker must visit, interview, and or examine the referred child. The worker must get the child's explanation of the alleged abuse or neglect. The child should be examined for signs of abuse or neglect. If necessary, a court order may be sought to examine the child if admission to the home, school, or any place where the child may be, or permission of the parents or persons responsible for the child's care for the physical and psychological or psychiatric examinations cannot be obtained.

Any signs of abuse or neglect must be verified and be well documented by photographs, witnesses, medical statements, statements from other professional persons, and or by descriptive, factual, and precise case recording of what has been observed and done.

Other use, if any, of the photographs is permitted only if the parent-child relationship has been terminated and the managing conservator gives written permission. Pictures of children are not to be used in communities where the child's parents or relatives might recognize them. Pictures of school age children should not be used without the child's written permission. Pictures are a confidential part of the case record.

If the report is that the child died of abuse or neglect, the worker should gather from the medical examiner or coroner who did the autopsy the needed information for case documentation and CANRIS finalizing.

(2) The worker must visit the child's home to determine whether the home conditions endanger the child or any of the siblings. The worker must verify any unsafe conditions. The worker must document by photographs, witnesses, and or by descriptive, factual, and precise case recording of what has been observed. The purpose of the photographs is for evidence to the court of the circumstances of the child.

(3) The worker must interview the child's parents and the people responsible for his care, if different. The worker should have his identification card available. The worker should explain DHR's role and legal responsibilities to the parents and family. The initial visit to the parents may be announced or unannounced.

The worker must obtain from the parents or people responsible for the child's care their explanations of the child's situation in relation to the complaint. Each allegation in the report must be discussed with the parents. The worker must be alert for problems in the home which are not mentioned in the report. These additional problems must be discussed with the parents and investigated thoroughly. The identity of the complainant will not be revealed.

The information obtained from the parents must be verified by interviewing collaterals or witnesses and/or by well documented, descriptive, factual, and precise

case recording of what the parents said and how they acted during the interview. The parents may give the names of collaterals who can verify the information they give. A protective services referral cannot be invalidated solely by the parents' unverified explanation of the situation.

(4) The worker must contact collaterals, including the complainant, relatives, neighbors, school personnel, family doctor, police, etc., to obtain or verify facts about the alleged abuse or neglect. As priorities for protecting the child permit, collaterals may be seen before or after the visit to the child, but they should be contacted before contacting the parents. Names of collaterals should be obtained from the complainant, the parents, and the child. Also, the worker's own judgment and experience in investigating reports should be used to select other people to contact. Information given by collaterals, if pertinent to validation or invalidation of the report, should be verified, as needed, to strengthen the information. Information given by collaterals must be documented by witnesses, depositions, affidavits, written records, and or by descriptive, factual, and precise case recording of what the collateral said. The collateral's willingness to testify in court, as needed, should be determined and recorded.

When school record information is needed during the protective services investigation, the worker should try to get the permission of the parents for release of the information. Parental consent should be obtained in a manner approved by the school and should include release of the information to the court, county, or district attorney, and law enforcement officials. Parental consent for release of the information does not require the school to release it. When parents refuse consent or are absent, the worker should refer the school to the appropriate sections of the Federal Family Educational Rights and Privacy Act as a basis for release of the information. DHR does not release the school information to anyone outside DHR without consent of the parents.

(5) The worker must obtain physical and/or psychiatric or psychological examinations of the abused or neglected child and, when indicated, any other children in the home to determine their condition and needs. A report of the examination must be filed in the case record. When the exams cannot be obtained due to lack of funds, this must be documented in the case record. When funding for physical, psychological, or psychiatric examinations is not available to DHR, necessary action to protect the child must proceed even without medical examination.

If parental consent cannot be obtained, a licensed physician or dentist, who has reasonable grounds to believe the child's physical or mental condition has been damaged by abuse or neglect, may examine the

child without consent. The physician or dentist may not examine the child without parental consent if the child is age 16 or over and refuses consent or if consent is refused by court order. The physician or dentist is not liable for damages except those resulting from his negligence. Examinations should be made when:

(A) the examinations are available without cost;

(B) local funds are available to pay for the examinations;

(C) the family is able to pay or is willing to use family insurance;

(D) the child is eligible for Medicaid, and:

(i) has medical problems or injuries which require a medical examination and/or treatment, or

(ii) has emotional problems which require a psychiatric examination and/or treatment, or

(iii) may be taken for an EPSDT screening examination.

(E) The examinations are available through a Title XX interagency agreement with a community MH/MR center.

(F) Title IV-B project funds are available for psychiatric or psychological examinations or short-term treatment.

(6) The worker must collect pertinent evidence about the circumstances of the child. The worker should use emergency homemaker or protective day care services when they are available and appropriate to prevent emergency or unplanned removal of a child from home during the investigation. To place an emergency homemaker in the child's home when the parents are absent, the worker must get permission from the parent or a court. Permission from the court may be sought in an emergency. The court should appoint DHR the temporary managing conservator of the child and require placement of an emergency homemaker in the home as a condition of retaining the child in the home. If before the investigation is complete, the worker and supervisor believe that the child should be removed from his home in order to protect him, this may be done with the court's permission or under the provisions of emergency removal. If the family moves before the investigation is completed and the worker knows where the child has gone, the worker must make a referral to the protective services staff or agency in the new location to assess the safety of the child, even when the family has moved out-of-state.

(g) The worker must thoroughly document the investigation and its findings at the time they occur. Recording in the case narrative should note contacts, dates, and information gathered. Reports and documents about the facts of the investigation should be obtained and filed. Witnesses to those facts which validate or invalidate the child's need for protection should be secured. When the investigation is completed, the

recording of the findings of the investigation should clearly state the items in the assessment of the investigation.

(h) The investigation will be considered completed when the decision is made that the child does or does not need protective services. The worker bases this decision on information and evidence gathered during the investigation. Protective services must be continued if validated, uncertain, or potential abuse or neglect is detrimentally affecting the safety and welfare of the child. When the location is known of a family that moved, an OTI must be made to complete the investigation.

(i) The results of the investigation must be explained to the parents, the child old enough to understand, and the complainant who is a professional person working with the family. If the complainant is a neighbor or friend, the worker should only tell them that DHR is investigating the report and whether DHR will continue working with the family. The interpretation to the complainant may be in writing to document that an explanation was made.

(j) Written reports of protective services investigations must be made to the court, district or county attorney, and local law enforcement office where sufficient grounds for the institution of a suit affecting the parent-child relationship are found. The report will be filed in the family's case record with the date of and reason for return. DHR staff must seek a written agreement with each of the offices requesting records about the procedures.

### *038 Investigation of Reports of Abuse or Neglect in a Nonstate Operated Child Caring Facility*

(a) When abuse or neglect of a child in a nonstate operated child care facility regulated by the Licensing Division is reported to DHR, staff must give immediate attention to the child. Protective services staff must investigate the report and involve licensing staff at the earliest possible point, through avoiding any delay in protecting the child. When possible, the protective services worker and the licensing representative should visit the facility together and interview the child.

(b) Protective services staff must report to CANRIS and proceed with the investigation of the allegation with the knowledge and assistance of the licensing staff. Also, protective services staff must provide whatever assistance is needed to licensing staff who are required to exercise enforcement of the licensing law and minimum standards.

(c) Medical care must be provided and legal action taken, as appropriate to the child's situation.

(d) Protective services staff must notify the child's family and follow through with the complainant. It is the responsibility of licensing staff, with assistance from protective services staff, to report to, and work

with, the governing body of the facility to ensure that the incident of abuse or neglect does not recur.

(e) If the day care resource specialist and/or child development specialist have a working relationship with the facility, they must be informed of the allegation, as well as its validity, in order for them to fulfill their respective responsibilities.

*.039. Investigation of Reports of Abuse or Neglect in a Facility Operated by a State Agency Other than DHR*

(a) When a report is received of abuse or neglect allegedly perpetrated in a facility operated by the Texas Education Agency, Texas Department of Mental Health and Mental Retardation, Texas Department of Health, Texas Youth Council, or Texas Rehabilitation Commission, DHR protective services staff must make a CANRIS report. The worker must notify the director of the facility of the report so that the state agency operating the facility can conduct the investigation of the report. The notification may initially be verbal or in person but must be confirmed in writing. The notification to the facility must offer the local DHR protective services unit's participation or consultation in the investigation. The notification must request a written report of the findings of the investigation. Copies of the notification must be sent to the regional director of social services, the regional administrator, the deputy commissioner for Financial and Social Services, and the director of the Licensing Division. At the discretion of DHR, the complainant's identity and the alleged perpetrator's or child's CANRIS history may be shared with the facility.

(b) When the final report is received from the facility, the CANRIS report must be finalized. The results of the investigation must be shared with the complainant and reported to the regional director for social services, the regional administrator, the deputy commissioner for Financial and Social Services, and the director of the Licensing Division.

*.040. Investigation of Reports of Child Abuse or Neglect in a DHR Foster Family or Adoptive Home.*

(a) When abuse or neglect of a child is reported to have occurred in a DHR foster family or adoptive home, an immediate and thorough investigation must be made. The program director responsible for the child (or for the home if the home is in a separate region from the child's program director) must designate a worker to be primarily responsible for the investigation. In the case of a foster family home, the child's worker and the foster home certification worker should be involved in the investigation. In an adoptive home, the adoptive family's worker and the unit holding conservatorship of the child should be involved in the investigation.

(b) A CANRIS report must be made. All children in the home must be examined and provided any needed care and protection. When the report is vali-

dated and involves children in DHR's managing conservatorship, the court having jurisdiction and the child's parents, if parental rights have not been terminated, must be notified.

(c) A report of the abuse or neglect complaint must be made by the regional director for social services to the director of the Licensing Division. This report is to contain the name and address of the foster or adoptive home and the nature of the complaint. The report must be made within 24 hours or the working day after the complaint has been received.

(d) When abuse or neglect of a child in DHR's managing conservatorship is validated to have occurred in the home, careful consideration will be given to continued placement of the child in the home. When the abuse or neglect indicates the family's rejection of the child or abusive parenting patterns, the child must be removed from the home. The child and family should be helped to understand the events which required the separation. The family's ability to give adequate care to children in DHR's managing conservatorship must be reassessed so that children will not continue to be placed with a family which might be abusive or neglectful.

*.041. Investigation of Reports of Child Abuse or Neglect in a DHR Foster Group Home.* When abuse or neglect is reported in a DHR foster group home, the procedures stated under investigation of reports of abuse or neglect in a nonstate operated child caring facility are followed.

*.042. Investigation of Reports That Public School Personnel Have Abused a Child*

(a) Policies relating to complaints of abuse against school personnel while on duty in the school system are predicated on the assumption that the school system is responsible for the behavior of its employees and must be involved in investigating and handling cases of alleged abuse.

(b) To provide for prompt and effective handling of complaints, DHR staff responsible for protective services to children will initiate discussions with each public school district in the region. These discussions should identify the areas of responsibility of both DHR and the school district as they pertain to protection of children. Written contracts, agreements, and procedures may be formulated to ensure continuity of understanding between department staff and the school district. Agreements with the school district should be reviewed at least annually and on change of school administration. If required to achieve appropriate communication and cooperation, the Child Welfare Board and the School Board may be involved in negotiations.

(c) When reports of abuse by public school personnel are received by DHR staff, they must secure

from the complainant all possible information and must prepare a written record. The worker must tell the complainant that the information is being referred to school or school board personnel for investigation. The complainant should be encouraged to take the complaint directly to appropriate school personnel. However, if the complainant does not wish to do so, the worker must assure the complainant that the department will not reveal the complainant's identity to the school.

(d) Upon receipt of a complaint against any employee of the school district, the worker or supervisor must make a verbal report of the complaint, except for the identity of the complainant, to the responsible person in the school district as identified in established agreements and/or contracts. If no such agreement exists, the report must be made to the principal of the school where the alleged abuser is an employee. If the alleged abuser is the principal, the report must be made to the superintendent of schools or to the next appropriate supervisory level above the principal. If the alleged abuser is the superintendent of schools, the report must be made to the president of the school board.

(e) The person to whom the complaint is reported must be asked to investigate the complaint and report back to the department at the earliest time possible. A tentative date for receipt of this report must be set at this contact.

(f) Immediately subsequent to transmitting the verbal complaint, DHR protective services staff must prepare a written referral, which must be approved by the supervisor. In addition to documenting the complaint, the agreements reached, and the plan for feedback of information about the investigation, this letter will advise that the department will be expecting a written report about findings and disposition within 30 days of the date of original referral.

(g) In the event the person receiving the complaint provides no report or an unsatisfactory report, the appropriate DHR staff member must communicate the problem to the regional director for Social Services. Appropriate contacts must be made with local administrative levels of the school district up to the president of the school board in an effort to secure satisfactory closure on the complaint. Should these efforts fail, the regional director may authorize a written report to the district attorney, identifying the details of the complaint and specifying the efforts made to secure cooperation from the school district. This letter will place the matter in the hands of the district attorney for further disposition.

(h) Upon receipt of a complaint of abuse against school personnel, the worker must report the complaint to CANRIS. The name of the person involved will not be entered. Rather, the worker must enter "School Personnel" and the school (or school district). The final

CANRIS report will be handled as follows:

(1) Invalid-- No name will be entered.

(2) Uncertain, Validated, or Potential-- The name of the person involved will be substituted for "School Personnel."

(i) Complaints against personnel of schools other than public schools must be handled as is any complaint against an individual. If the school is subject to any regulatory laws, any validated, uncertain, or potential complaint and its resolution must be reported to the appropriate regulatory authority

*.043. Investigation of Referral of a Truant, Runaway, or CHINS Child or Unmarried or School-Age Parents.* For referrals of youth, age 10-17, or unmarried or school-age parents, the intake procedure involves:

(a) an investigation and/or social study into the circumstances of the referred youth;

(b) an assessment of the youth's need for protection and services;

(c) the provision of needed protective action;

(d) information, referral, and linkage to needed family and community resources;

(e) a documentation of whether the youth's situation involves abuse or neglect;

(f) a determination of whether the youth needs on-going protective services;

(g) the report of the investigation to the family and complainant.

*.044. Investigation of Lack of Medical Care Because of Parents' Religious Beliefs.*

(a) Refusal of parents to provide needed medical treatment for a child because of the parent's religious beliefs does not constitute medical neglect. The child, however, must be given DHR's protection through a protective services investigation and the court's protection as necessitated by the child's condition

(b) During the protective services investigation, a worker must interview the involved medical personnel and the parents to determine the nature and severity of the child's illness and possible alternatives to the recommended medical treatment. When possible, more than one doctor's opinion will be secured. If the child's life is in danger or if he is threatened with permanent loss of a limb or of major muscle, hearing, sight, or intellectual functioning, DHR staff must get written medical statements reflecting this.

(c) DHR must intervene by presenting the child's situation to the court when the doctors' statements indicate that without the recommended medical treatment, the child will die or suffer permanent loss of a limb or of major muscle, hearing, sight, or intellectual functioning.

(d) When the investigation shows that the child lacks needed medical attention because of the parents' religious beliefs (and not because of other parental



motivation or incapacity), and that the child has not otherwise been abused or neglected, the CANRIS report must be invalidated.

*.045. Investigation of Reports Involving Handicapped Persons.* The basis for determining the need for protective services in a referral involving a handicapped parent or child is the effect of the situation on the children involved, not the existence of the handicapping condition. DHR must use its resources, provide information and referral about community resources, and help develop new resources to provide handicapped parents and children with social services equal to those provided to the nonhandicapped.

*.046. Deaf Persons*

(a) When a protective services case involves a deaf person or child, a qualified deaf language interpreter should be used to communicate with the deaf person throughout DHR's involvement in the case. A qualified language interpreter is a person skilled in the language of signs or in communicating with the particular deaf person. The case record should document that the client was aware of the availability of an interpreter, when one was actually available.

(b) The deaf interpreter should be given information about DHR's legal role and responsibility for the protection of children, the social work principles involved in DHR's approach to and planning with families, and how to keep information confidential.

(c) Volunteers should be recruited from the deaf community to work with individual clients under the supervision of the caseworker. Caseworkers and volunteers should make a strong outreach to individual clients during the progress of the protective services case. Purchase of service contracts as agreements should be made with community agencies to provide services to deaf clients in open protective services caseloads. When a referral is made, the worker, interpreter, or volunteer should accompany the client on the first visit to the community agency and on later visits, if necessary.

(d) A deaf client should not be allowed to sign a volunteer placement agreement or affidavit of relinquishment unless the agreement or affidavit is explained to the deaf client by a qualified deaf language interpreter and by an attorney, if available.

*.047. Court Ordered Social Study on Disputed Conservatorship Petition*

(a) In court cases involving disputed conservatorship of children, such as divorced parents who are each seeking managing conservatorship of a child, the court may request DHR to study the home situation of each parent and report the advantages and disadvantages of each home for the child.

(b) The worker should interview the parents, relatives, and the child and make appropriate collateral

contacts to get and verify information about the social, emotional, economic, and health factors in the home. The worker must submit a written report to the court within the prescribed time limits.

*.048. Criminal Investigations by Law Enforcement Officials.* During a law enforcement criminal investigation of child abuse and neglect, DHR should cooperate with the district or county attorney, law enforcement officials, or Investigation Division conducting the investigation. The worker should be available to discuss DHR's knowledge of the situation, share case record information relevant to the criminal investigation, and act as a witness.

*.049. On-Going Protective Services for Children in Their Own Home.*

(a) When on-going protective services intervention is necessary after the investigation, DHR must determine from the findings of the investigation whether the parents can potentially change the problem situation enough so that the child can receive adequate care in the home. DHR must also determine the degree of danger to the child in the home. If the child is not in immediate danger of permanent harm, and the parents have potential for improving the problem situation, DHR must try to work with the family to improve the care of the child and prevent removal of the child from his family. When it is believed that the child is in immediate danger of permanent harm, DHR must refer the child's situation to the court for permission to remove the child or to take other action as needed to protect the child from permanent harm, or DHR must remove the child from the home under Chapter 17 of the Texas Family Code.

(b) An evaluation must be continually made regarding the hazard to the child if left in his home versus the trauma to the child and family if the child is removed from the home.

(c) AFDC or SSI recipients receiving protective services must be provided the DHR social, medical, and financial services for which they apply, are eligible, and are able to take advantage of when the service is available in the community.

(d) When on-going protective services are given to children in their own home, the worker must establish a plan for providing services. The worker should make every attempt to mutually determine all or some part of the plan with the family. The service plan must be recorded in the family's case record. The plan must include:

- (1) the problems and how they contribute to the abuse or neglect of the child;
- (2) the family's capacity and motivation to deal with the problems;
- (3) the planned solutions to the problems. In-

clude the specific ways the care of the child is to be improved;

(4) the ways in which the family is able to help solve the problems;

(5) services provided to solve the problems, how and by whom (including which DHR, community, and extended family resources will be mobilized to help the family);

(6) the appropriate times for periodic reviews of the plan (not more than every three months);

(7) criteria for ending DHR services to the child.

(e) If problems continue to exist after the initial service plan has been carried out, it must be revised to attempt to correct the situation. If the home remains unsafe for the child six months after DHR began work with the family, the worker and the family should discuss other plans for the child, such as relative placements, foster care, or termination of parental rights. If parents are unwilling to consider these alternatives, but the worker and his supervisor feel they are appropriate, the situation should be referred to the court.

(f) As long as protective services to the child in his own home are continuing, the worker must have at least one monthly interview with the child and family at their home or in the office. During the early period of work with the family, more frequent contacts may be necessary to protect the child.

(g) The worker should decide if, and at what point, he will work directly with the child. Work with the child is not done without the knowledge of the parents except in some rare instances with children, age 10-17. The worker should explain to the child and parents what information will be kept confidential. If the child's situation has detrimentally affected his health, regular medical attention should be obtained.

#### 050 Emergency Homemaker Services

(a) Emergency homemaker services are the immediate supervision and care given to children in need of protective services in their own homes by a trained and supervised homemaker during an emergency or a crisis situation. Emergency homemaker services are provided without regard to income. This service is available only for children in open protective services cases. The DHR protective services worker determines the need for the service, refers the client to a contract service provider, and authorizes the service.

(b) When a situation needing emergency homemaker services is identified and parents are present, the worker should discuss the service and its benefits with the parents and get their consent for the homemaker to provide services. When parents are not present, the worker may seek a court order to allow the emergency homemaker to enter the home and care for the children until the parents return, the children are removed, or the homemaker's services are no longer

needed. The worker should give the homemaker all available information on the situation, and plan with the homemaker for services. The worker may accompany the homemaker to the home.

(c) Emergency homemaker services may be provided in the home for a few hours, or 24 hours at a time. The homemaker should be supervised by the DHR worker and the homemaker's supervisor when the service is provided through a contract agency. The worker, client, and homemaker should plan together about follow-up services.

(d) Emergency homemaker services can be provided no longer than 30 days during a one-year period. The 30 service day limit includes any follow-up visits.

(e) For children of WIN clients in their own home, emergency homemakers may be available as a resource from Title XX to help protect children and to help clients prepare to take part in the WIN program or keep their jobs. WIN program funds may not be used to purchase emergency homemaker services.

#### 051 Protective Day Care

(a) Protective day care is day care for children who need protective services. Protective day care is given without regard to income. Protective day care is available only to children in open protective services cases. Contract providers can only serve clients who are authorized to receive the service by DHR protective services workers. Protective day care services cannot be started before DHR authorization.

(b) Protective day care is given to infants, pre-school age, and school-age children for a portion of the day outside the child's home.

(c) The worker regularly consults with the provider to monitor the status of work with the client and find out if the results of the protective day care suggest a change in service planning. A child may receive protective day care for more than three months only with program director approval. The worker and supervisor must evaluate the effectiveness of the protective day care with respect to the other casework plans. If they recommend that protective day care services continue for more than three months, the program director must approve the continued day care before it is given. The worker must tell the provider when authorization to serve the client is ended.

(d) Protective day care is given through a purchase of service contract with a nonprofit private or public agency. Delivery will be in a day care center or family day home which complies with applicable state licensing standards and federal requirements. Protective day care may not be provided through individual provider agreements with day care centers or through in-home day care. The plan of operation of facilities under purchase of services contract with the department must allow provision of protective day care with-

out regard to income before protective day care can be provided.

(e) Payment procedures are completed by the contract services provider using regular contract billing methods.

#### .052. *Community Treatment Services.*

(a) Community treatment services provide assessment and evaluation, treatment planning, treatment, and therapy for children and their parents or caretakers in open protective services cases. Community treatment services are provided through purchase of services contracts. The services are given without regard to income. Contract agencies will serve only clients who are referred and authorized to receive the service. Community treatment services cannot begin before DHR authorization.

(b) When the worker has found that a child or parent needs community treatment services, he should explain the service to the client, mutually plan with the client so that they can agree on the expected benefits of the service, and make the referral to the contract agency. He authorizes the service and consults with the contract service agency about the needs and background of the client and the department's service planning.

(c) The worker must regularly consult with the contract agency to monitor the status of work with the client and determine needed changes in service planning. The worker must tell the provider when authorization to serve the client is ended.

(d) Community treatment services are provided through purchase of services contracts with private nonprofit or public agencies. Payment procedures are completed by the contract services provider using regular contract billing methods. The basis for payment is cost reimbursement.

#### .053. *Camping Experiences.*

(a) Camping experiences provide therapeutic camping services and youth camp summer recreational services for foster or own homes children in open protective service cases. The term wilderness camp is used to describe both types of programs. The distinguishing factor is whether the emphasis is on therapy or recreation.

(b) Therapeutic camping is a 24-hour-a-day camping program where the primary emphasis is on therapy rather than recreation. In these camping programs, the admission is selective and thorough intake studies are done, case records kept, and service plans made for each child. The regional institutional licensing representative, and the Licensing Division of State Office, have information about facilities licensed as therapeutic camps.

(c) Title IV-B project funds used for placement of children in therapeutic camp programs are used to pay a service fee but not to pay for a child's regular care and

maintenance in the facility. The service fee pays for the special therapeutic services the child required. Payment for the child's regular care and maintenance in the facility is provided through foster care assistance funds or other income the child receives. The Title IV-B service fee is paid in addition to foster care assistance funds. The total payment to the therapeutic camping provider must not exceed the provider's usual charge for the service.

(d) Youth camp experiences emphasize recreational, educational, athletic, and religious activities rather than therapy. With the approval of the regional director for social services or regional Title IV-B project coordinator, youth camp experiences may be provided for children in open family service caseloads where the child is receiving protective services.

(e) Payment for youth camp experiences is based on a daily fee. Title IV-B funds may be used for the total payment for the service if no county funds are available.

(f) Before delivery of services, DHR must have an approved signed agreement with each provider of camping services. A Vendor Identification Number form must be completed if the camping provider does not have a comptroller's identification number. The agreement must include, but is not limited to:

- (1) name and location of the camp;
- (2) type of camp, such as summer camp, day camp, therapeutic camp;
- (3) average length of stay for DHR children;
- (4) cost per DHR child;
- (5) number of children to be served;
- (6) DHR license number of therapeutic camp, TDH license number of youth camp, or an indication that the youth camp has applied to TDH for a license.

#### .054. *Psychiatric and Psychological Services.*

(a) Psychiatric and psychological examinations and treatment may be obtained through:

- (1) interagency agreement with community MH/MR centers;
- (2) Title IV-B funds;
- (3) Medicaid psychological exams are covered under Medicaid only when they are ordered by a psychiatrist and are part of the psychiatrist's work-up;
- (4) facilities of the TDMH/MR;
- (5) purchased social services, as a support service.

(b) Title IV-B funds can be used to purchase psychiatric and psychological examinations and short-term treatment related to the exam for children in open protective services caseloads and their family members, caretakers, or potential caretakers.

(c) Psychiatric and psychological examinations and short-term treatment are to be sought from the mental health community before Title IV-B funds are used to provide these services. Title IV-B funds are to

be used to develop services for families and children who do not live in the catchment area of the community MH/MR service center. After resources are developed for these children, this allocation may also be used to develop resources for children in MH/MR contracts with the department. The MH/MR contracts are to be used to their fullest capacities.

(d) The worker and others involved with the child or family should prepare an evaluation of the helpfulness of examinations or short-term treatment. Positive evaluations of the service is the basis of continued use of the professional person providing the service.

(e) A Purchase Voucher is used to make Title IV-B payments to the psychiatrist or psychologist. Before delivery of services, DHR must have an approved signed agreement with each psychologist or psychiatrist. A Vendor Identification Number form must be completed if the psychologist or psychiatrist does not have a comptroller's identification number. The agreement must speak to, but is not limited to:

- (1) name, title, and location of provider;
- (2) cost per child;
- (3) number of children to be served;
- (4) identification of whom in the protective services case is receiving the service;
- (5) purpose of examination;
- (6) approximate length of the examination or treatment.

*.055. On-Going Protective Services for Truant, Runaway, or CHINS Children.*

(a) On-going protective services are given to children, age 10 through 17, by referring the youth to other community and family resources by direct delivery of services, and by purchase of services contracts. In addition to traditional protective services for children, age 10 through 17, on-going protective services are directed toward keeping these juveniles out of the criminal justice system. Youths, ages 18 to 21, may be given continuing services if they were being served by the department when they became 18, and are completing school or vocational training.

(b) Every effort must be made to locate a runaway child in an open protective services case, including notifying the police, the child's parents if parental rights are not terminated, and the court when the department has managing conservatorship. Legally, the managing conservator of a child stands in lieu of his parents. Therefore, a runaway child's travel back to where he lives is the responsibility of the protective services unit holding managing conservatorship.

(c) When the home situation or level of conflict between the youth and his parents reaches such a point that DHR believes placement outside the home must be considered, the worker should explore with the youth and family the feasibility of keeping the family intact or of removing the youth from the home. The worker

should seek an agreement with all involved as to what would be best for the youth.

(d) Alternate living arrangements which should be explored are:

- (1) the family placing the youth with relatives or with close friends of the family or of the child;
- (2) foster family home placement;
- (3) foster group home placement;
- (4) halfway house living arrangement;
- (5) institutional placement in a facility providing basic or specialized care;
- (6) independent living arrangement. An independent living arrangement is a nonrelative, non-licensed situation in which the child has placed himself.

The department cannot place a child in an independent living arrangement or pay for the placement, as this would violate the child-placing standards. However, the department can allow the child to continue living independently after the child has placed himself when the child: is not in danger, resists or runs away from approved placements, and the only alternative living arrangement is a Texas Youth Council or juvenile probation detention facility. When possible, the worker should give the youth the full range of the department's services, including helping the youth to leave the independent living arrangement if it proves harmful to him. The worker should intervene more and use a greater degree of legal authority the younger the child is and the more harmful the effects of placement are on the child. When a child in the managing conservatorship of the department places himself in an independent living arrangement, the court and the parents, when parental rights are not terminated, should be notified and kept informed of the youth's circumstances.

*.056. Self Support Services.* The worker should help juveniles complete their education whenever possible. The worker can refer juveniles for tutoring services, vocational services, the graduate equivalent diploma (G.E.D.), or other comprehensive service programs that may be available in the community. The worker should help older juveniles prepare for supporting themselves.

*.057. Transitional Services for Juveniles*

(a) Services for juveniles are to prevent or ameliorate abuse or neglect or inappropriate institutional care of eligible youth. Eligibility for services is without regard to income. The provider agency determines and certifies eligibility on the Eligibility for Services Without Regard to Income form. To be eligible for services for juveniles, the youth must be:

- (1) truant, runaway, or a child in need of supervision, and
- (2) age 10-17, and
- (3) in open DHR cases, or referred to DHR or the contract agency, and
- (4) in need of the services.

(b) When a juvenile is found to need these services, this must be discussed with him and his parents, if present. If the juvenile wants to use the service, a referral is made to the contract service agency, providing them with appropriate background information. The eligibility form is completed by the contract agency. When the department has an open case on the juvenile, the worker must regularly contact the contract service agency to monitor the status of work with the juvenile and determine needed changes in service planning.

(c) Services for juveniles are provided through purchase of services contracts with public or nonprofit private agencies. Payment procedures are completed by the contract services provider using regular contract billing methods. The basis for payment is cost reimbursement.

(d) The contract for services for juveniles plan of operation should include, but need not be limited to, individual counseling, crisis counseling, family counseling, casework services in alternate care facilities exclusively serving the juveniles, psychological testing, information and referral, coordination with other local support services, and coordination with other funding sources, such as Title IV-B, Criminal Justice Division of the Governor's Office, Texas Youth Council, and local agencies and organizations.

(e) Room and board expenses are not allowed as a cost to be included in the approved budget of a contract provider, with the exception of therapeutic camping.

#### *058. On-Going Protective Services for Unmarried or School-Age Parents*

(a) The department offers on-going protective services to unmarried and school-age parents by developing comprehensive community programs, linking the parents to community and family resources, direct delivery of services, and purchasing services. Services to this client group are given to prevent child abuse and neglect. Work with unmarried and school-age parents is mainly directed toward planning for the care and rearing of the baby. The worker should help parents consider all the alternatives available for planning and caring for the baby.

(b) When at all possible, the father of the baby, the grandparents, and other family members who are involved with the mother and baby should be included in service planning. The father should be told what plans are being made for his child, and that he has a part in deciding the child's future. The father must be involved in the court proceedings to terminate his legal rights to the child. The worker should help the father decide whether he will support the mother and unborn child.

(c) If the unmarried or school-age parents want to give up their child for adoption or other permanent planning, the department will join the parents in a

court petition to terminate the parent-child relationship and place managing conservatorship with the department. An affidavit of relinquishment should be executed by the parents. If the child is not the legitimate child of the alleged father, an affidavit of status of the child must be executed by the mother, if at all possible. If the parents wish to establish paternity or petition the court for child support, the worker should help the parents get legal advice and services. If there are other legal problems, the worker should help the unmarried or school-age parents get legal advice and services in the community. A full social history about the baby must be obtained to aid in adoption placement.

(d) If the DHR is the managing conservator of the unmarried or school-age pregnant mother, the worker must arrange for immediate medical verification of the pregnancy. Immediately after verification of the pregnancy, the worker must discuss with the mother plans for the unborn child. The worker should help the girl involve her parents in planning for the child, unless the parent-child relationship has been terminated. The worker must also notify the court having jurisdiction of the mother about the pregnancy and the mother's plans for the child. The worker must involve the father of the baby, as stated above.

(e) If the mother is interested in an abortion, the worker should refer her to abortion resources. The worker should discuss with her all pregnancy alternatives to the abortion and should arrange for her to fully discuss the abortion process and its ramifications with a qualified physician, counselor, or nurse. If the mother requests an abortion, the worker should discuss notifying her parents to involve them in on-going events in her life, as appropriate. The worker must also notify, in writing, the court having jurisdiction of the pregnant unmarried or school-age child of her decision to have an abortion so that the court can interview or appoint an attorney *ad litem* for the child, if it wants. The worker must get from the mother a written notarized request and consent for the abortion.

(f) DHR allows the unmarried mother to consent to the abortion and most medical facilities providing abortions will allow the minor to consent to her own abortion. An unmarried minor can consent to hospital, medical, or surgical treatment related to her pregnancy.

(g) After the abortion or the birth of the baby, the unmarried or school-age parent(s) must be offered family planning counseling and services. The department must offer family planning services to unmarried or school-age parents in open protective services cases.

*059. Self-Support Services for Unmarried or School-Age Parents.* The worker should help the unmarried or school-age parent finish high school, whenever possible.

## Removal, Preplacement, and Legal Services 326.50.73

These rules have been approved by the Texas Board of Human Resources and are adopted under the authority of Texas Civil Statutes, Articles 695a and 695c.

### .027. *Removal, Preplacement, and Legal Services.*

(a) while investigating a report of a child in need of protection, or providing on-going protective services to a family, DHR may find it necessary to consider protective removal of the child from his home. When this occurs, a written service plan must be developed to:

- (1) determine the legal basis for the removal;
- (2) plan for services to the family and child during removal;
- (3) determine where the child will be placed;
- (4) complete the foster care intake study if the child is placed in foster care;
- (5) plan for removal and preplacement services to the family, child, and out-of-home placement personnel.

(b) A child can be removed from his home by DHR only with prior supervisory approval or with prior program approval, in the supervisor's absence. If the supervisor or program director does not have a master's degree in social work and two years' experience in child-placing, the removal must be reviewed by a staff member with these qualifications. The review should be completed before removal unless emergency protection of the child is needed.

(c) No child can be removed from his home without one of the following:

(1) A court order. Except in an emergency, the court order must be obtained before placement.

(2) A clear reason for removal under the provisions of emergency removal. Only when an immediate danger to a child's health or physical safety exists will a child be removed from his home on an emergency basis before a court order can be obtained. Emergency removal of a child from his home should not be used when a court order can be obtained before removal without immediate danger to the child's health or physical safety.

(3) Written parental consent. A child can be removed from his home on a planned basis without a court order only when the situations of the child, family and community meet the criteria for voluntary protective placement. Written parental consent must be given in the form of:

- (A) Temporary Voluntary Placement Agreement, or
- (B) An Affidavit of Relinquishment of Parental Rights.

### .028. *Removal and Preplacement Services to the Family and Child.*

(a) Once the decision has been made to seek removal of the child from the home, the reasons for removal **must be discussed** with the parents, including the changes necessary for the return of the child to their care. **The worker must explain** to the parents the need for court action and tell them of planned court action. The worker must discuss with the parents what DHR will recommend to the court about visitation and child support. The parents must be encouraged to prepare for the events of the hearing by seeking legal counsel and should be helped to appear in court.

(b) If the parents are not present when the child is removed from the home, the worker must immediately try to contact them. Parents who are in jail or hospitalized must be notified of DHR's removal of the child and the legal basis of the removal. If the parents' whereabouts are unknown, the worker's efforts to locate them should not delay acting to protect the child.

(c) Preplacement services are provided to help the child and family understand why the child is being taken from his home and to help them take part in finding another home for the child. The worker should help the parents talk with the child, regardless of his age, about why he is going to live elsewhere, what the parents' plans for themselves are, and their part in the planning for his care.

(d) A child must be prepared for placement in a manner consistent with his age, his ability to take part in the plans, and his ability to understand the reasons for placement. The worker should talk with the child about all of the following:

- (1) why he is being removed;
- (2) where he is going to live;
- (3) how he feels about these events;
- (4) the legal basis for removal;
- (5) arrangements for visiting with his parents and siblings.

(e) Except in an emergency placement, placement with relatives, or in the placement of an infant under six months old, the child must visit the foster care facility before placement and meet the foster family or institutional staff so that he can become familiar with the new home. In emergency placements, the child should be prepared for placement as described above and as adjusted to the situation. When preplacement visits are not possible, pictures of the home, family members, and any pets, brochures from facilities, verbal descriptions, and factual information are helpful in relieving the child's fear of the unknown. The worker is responsible for ensuring orderly placement.

(f) The child must have a medical examination within 30 days before placement or seven days after emergency placement. For Medicaid eligible children

an EPSDT examination signed by a licensed physician will meet this requirement. Results of the medical examination must be documented in the child's case record by the appropriate form or by the physician's reports.

**029 Relative Placements.** Whenever possible the worker must explore the use of relatives' homes as the first choice for placing a child outside his own home. A written home study must be made and approved by the supervisor before placement or immediately after an emergency placement. Parents' and children's feelings about placement with relatives should be considered. When parents are opposed to a relative placement, the decision of a court may be required to effect the placement. In crisis situations where the foster care placement must be made immediately, and the worker has no previous knowledge of extended family members, relative placement must be explored as soon as possible after the emergency placement.

**030 Foster Care Intake Study**

(a) A foster care intake study must be prepared before placement when a child is to be placed in a foster family home, foster group home, or institution. In emergency placements, the foster care intake study must be started within five days after placement and completed within 30 days. The conditions that made emergency placement necessary and the steps taken to start the intake study within five days must be clearly documented in the child's record. The intake study must be entered in the child's record.

(b) The supervisor must review, approve, and must initial the foster care intake study before placement so he can decide whether the placement plan is appropriate. For emergencies, the review must be done within 30 days after placement. If the supervisor does not have a graduate social work education and two years of experience in child placing, the intake study must also be reviewed by a staff person with these qualifications.

**031 Removal by Court Order**

(a) When DHR decides it is necessary to remove a child from his home and there is no emergency, the situation must be presented to the appropriate court. If the court finds that it is necessary to remove a child from a hazardous home situation, DHR, upon order of the court, will plan for removal of the child and provision of foster care. The worker and supervisor, in consultation with the county or district attorney, or regional attorney, must decide whether to petition for managing conservatorship, possessory conservatorship, termination of parental rights, or temporary orders. The decision should be based on the danger to the child, the family's situation, DHR's recommendations as established by the findings of the investigation, and the work with the family and child.

(b) The findings of the investigation must be information that can be presented as evidence acceptable to the court as proof of the suit. The department presents its findings to the county or district attorney for use in preparing and filing a petition for a suit affecting the parent-child relationship.

(c) The petition should show good cause why the recommended action is necessary to protect the child. In all instances, when DHR seeks managing conservatorship, the petition must request the court to order what the child-support responsibilities of the parents are.

(d) The results of the court hearing about removal of the child and/or the termination of the parent-child relationship must be explained to the parents and the child, when the parents' whereabouts are known.

**032 DHR Central Record File**

(a) The department must maintain a Central Record File (CRF) of the following suits affecting the parent-child relationship:

- (1) termination of parental rights,
- (2) determination of paternity,
- (3) conservatorship,
- (4) adoptions,
- (5) Habeas Corpus,
- (6) divorce, annulment, or suit to declare a marriage void where children are involved,
- (7) cases of separation involving the custody and support of children.

(b) On the written request of an attorney, court, or any party, the CRF identifies the court which had last jurisdiction of the child or says that according to DHR records, the child has not been the subject of a suit affecting the parent-child relationship. Upon request, inquiry forms will be supplied without charge. Telephone inquiries will be accepted in emergency situations if they are followed by written requests. The department must respond to each request within 10 days. When a judgement or decree is entered in any suit involving the parent-child relationship, except in adoption suits, the clerk of the court is required to send to the CRF a copy of the decree, together with the name of each child, birth date, and place of birth. Upon request, forms for entering this information will be furnished without charge.

(c) Upon entry of a decree of adoption, the court clerk must send to the CRF a certified copy of the petition and decree of adoption. At the petitioner's request, the court clerk must transmit a complete file on the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. When the CRF receives the complete file or petition and decree of adoption, it must close the records concerning the child; and except for statistical purposes, must not

disclose any information concerning them except upon order of the court which issued the decree or a district court of Travis County.

### .033. *Service of Citation.*

(a) The following persons are entitled to service of citation on the filing of a petition in a suit affecting the parent-child relationship:

- (1) managing conservators, if any;
- (2) possessory conservators, if any;
- (3) people having access to the child under an order of the court, if any;
- (4) people required by law or by order of a court to provide for the support of the child, if any;
- (5) guardian of the person of the child, if any;
- (6) guardian of the estate of the child, if any;
- (7) each parent whose parent-child relationship has not been terminated or by whom process has not been waived under Section 15.03(c)(2) of the Texas Family Code;
- (8) the alleged or probable father, in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father or probable father as provided in Section 15.04 of this code or unless the petition states that the identity of the father is unknown;
- (9) the alleged father, in a suit to determine the paternity of a child, unless the alleged father is a petitioner.

(b) Although the Texas Family Code makes notice optional to the unknown or alleged father of an illegitimate child in some cases, the U.S. Supreme Court has established that the father of an illegitimate child has certain rights. Since the uncited father could come back at a later date and claim that his rights were not fully protected, the worker must try to get a citation of the unknown or alleged father in all suits affecting the parent-child relationship.

(c) The worker is responsible for giving the court the information it needs to issue and serve citations. The worker should try to ensure that notice is given to all parties interested in the child.

(d) The worker must diligently search for all missing parents so that they may receive citation. If the parents cannot be notified by personal citation in suits where termination of the parent-child relationship is not sought, the court clerk may arrange for citation to be served by registered or certified mail with a return receipt requested or by publication. In suits in which termination of the parent-child relationship is sought, personal citation or citation by publication is required. The notice must be published one time.

### .034. *Legal Rights of Parents and Children.*

(a) DHR must respect the parents' following rights:

- (1) To be advised by DHR of planned court action.
  - (2) To be told by DHR that they have the right to have legal representation at court hearings. The worker should help the parents get this representation. The worker or district/county attorney should talk with the family's attorney about DHR's role in the hearing.
  - (3) To receive proper legal citation for the hearing.
  - (4) To attend the hearing. The worker should make every effort to get the parents to attend the hearing, including arranging for transportation in some cases. The court's decision about the conservatorship of the child, and any subsequent adoption placement, are strengthened when the parents are present at the hearing and have legal representation.
  - (5) To have an interpreter in court if the parent is deaf or does not speak English.
  - (6) To petition for termination of the parent-child relationship or otherwise voluntarily give up their parental right when it is in the best interest of the child.
- (b) The child must be involved in court action when required by the Family Code and should attend court hearings when indicated by case planning. There are several instances in which the child may be legally required or allowed to attend the court hearing.

### .035. *Managing Conservatorship*

(a) The department may seek managing conservatorship of a child when the plan with the family is to work to rehabilitate the family and return the child to the home. Managing conservatorship should be sought when the child's home is not safe for the child, but an adoptive or relative's home is not DHR's plan for the child. When the parents and DHR agree on a plan for working together, they may enter an agreed order at the hearing, thereby avoiding the adversary nature of the proceedings.

(b) The court considers the best interest of the child and the circumstances of the family in determining managing conservatorship. A child age 14 or older may file with the court a written statement about his choice of managing conservator. When managing conservatorship is contested, any party to the suit applies to the court. The court must confer with a child age 12 or older and may confer with a child under age 12. On the motion of a party, or at the court's discretion, the court's conference with a child age 12 or older must be made a part of the court record. The court may permit counsel to be present at the interview.

.036. *Managing Conservatorship and Child Support.* When DHR seeks or has managing conservator-



ship and the parent-child relationship has not been terminated, staff must seek to have the court order either say what the child support responsibilities of the parents are, or say that there is no child support ordered.

*.037. Responsibility of Managing Conservator for Periodic Reports to the Court.*

(a) A managing conservator who is not a parent of the child must each 12 months after appointment, file with the court a report of facts about the child's welfare. The court may request this report more frequently and the report may be submitted to the court more frequently. The worker should tell the court of changes in the child's situation. When the child goes through a series of placements and replacements or runaways, and when an appropriate placement is not available to him, a written report of these facts must be submitted to the judge holding continuing jurisdiction. DHR must give in the report its efforts to find an appropriate placement for the child and the reasons why DHR has been unable to succeed. Local staff should develop with their local court a systematic procedure for reviewing the status and progress of all children in their managing conservatorship.

(b) The annual report to the court by the managing conservator should include:

(1) a summary of his placement during the period covered by the report, including the child's present living situation, and reasons for removal, if he has been removed;

(2) his present physical, mental, and emotional condition;

(3) an assessment of the problems and needs of the child, and any progress the child may have made;

(4) a summary of the child's contacts with the family;

(5) a summary of the agency's work to rehabilitate the family;

(6) an evaluation of the appropriateness of continuing the present child care plan;

(7) a recommendation about the kind of placement which would serve his best interest;

(8) any other information requested by the court.

*.038. Possessory Conservatorship.*

(a) The department may seek possessory conservatorship of a child to have the court's sanction and authority for overseeing the care of a child in his own home. Possessory conservatorship usually means visitation rights. When a managing conservator is appointed, the court may appoint one or more possessory conservators and set the time and conditions for possession of or access to the child by the possessory conservators and others.

(b) When managing conservatorship is awarded

to DHR and possessory conservatorship is granted to the parents, grandparents, or relatives, the worker should explain to them their right to visitation and other legal rights and responsibilities while the child is in their possession. When the court grants managing conservatorship to DHR and does not grant possessory conservatorship to anyone, the worker must try to get the court to clarify the rights of the parents, grandparents, and other interested relatives.

*.039. Termination of the Parent-Child Relationship.*

(a) DHR may petition the court to terminate the parent-child relationship when the degree and extent of the mistreatment of the child and the family's circumstances meet the stipulations under Section 15.02(1) of the Texas Family Code, the department's work with the family shows that the home will not be a safe permanent place for the child, and an adoptive or permanent placement in a relative's home can be obtained for the child.

(b) The decision to petition the court to terminate parental rights should be based on work with the family in their own home or during foster care placement. This decision is not generally made solely on the basis of the investigation or work with the family in their own home.

(c) The decision to petition the court to terminate parental rights may be based on an affidavit of voluntary relinquishment of parental rights.

(d) A decree terminating the parent-child relationship cannot be modified or overturned. Therefore, termination must be sought while DHR is planning with the family to return the child to the home.

(e) An alleged biological father, who is not married to the mother and whose paternity has not been legally established, has no parental rights. In a termination proceeding, the rights of the mother are terminated and the alleged biological father is properly cited so that he may have the opportunity to legally establish his parental rights and to challenge the termination. If he has not established paternity, he has no legal rights to the child and his parental rights therefore, do not have to be terminated. When the mother was married at the time the child was born or conceived, or when the biological father described above establishes his paternity and challenges the termination, his rights too are subject to termination.

*.040. Emergency Removal.*

(a) Emergency removal is defined as removal of a child from his home without written consent of his parents and before a court hearing. Emergency removal can only be made when all of the following are documented:

(1) an immediate danger exists to the child's health or physical safety, and

(2) everything has been done for the child to protect him in his home, and

(3) a court order cannot be obtained before removal without immediate danger to the child's health or physical safety.

(b) A child can be removed from his home through emergency removal procedures only with prior supervisory approval, or with prior program director approval in the supervisor's absence. If the supervisor or program director does not have a master's degree in social work and two years experience in child-placing, the removal must be reviewed within 30 days by a staff member with these qualifications.

(c) When an emergency removal is necessary, the child and family must be prepared for the removal and placement just as though it were a planned placement, within the limitations of the emergency situation.

(d) Parents have the right to know of DHR's decision to remove a child from their home, and the reasons for the decision, before the child is removed.

(e) The child must have a medical exam within 30 days before the placement. A foster care intake study must be begun within five days after placement and completed within 20 days. A plan for work with the family after placement must be developed.

(f) The Texas Family Code stipulates that the worker may remove a child without civil liability if that worker has reasonable cause, when he removes the child, to believe there was an immediate danger to the child's physical safety or emotional well-being. Reasonable cause must be supported by verified facts documented in the case record.

(g) After emergency removal, the worker must immediately file a petition in court and a hearing must be held. Since the law does not say when the hearing must be held, the worker should request the setting of a hearing date when the petition is filed. The hearing should be the next working day after removal or as soon as possible after getting medical examinations or evaluations, fuller investigation of the facts, authentication of the custodial rights, or other material inquiries recommended by the district or county attorney or the court.

(h) If during the period of the emergency order DHR feels further court action is necessary to protect the child when the order expires, the worker should ask the county or district attorney to file a petition in the court of continuing jurisdiction or the court having venue. In the petition, the following information should be presented to the court:

- (1) facts documenting the child's need for protection;
- (2) immediate plans for the child;
- (3) visitation and child support responsibilities of the parents.

DHR must not seek successive temporary orders without a hearing following the emergency removal.

#### .041. *Voluntary Protective Placement.*

(a) A voluntary protective placement is a DHR placement of a child needing protection into a licensed or certified facility based on written parental consent and without a court order. When parents request removal of a child, DHR must help them make adequate arrangements to protect the child by:

(1) Helping the parents select non-DHR substitute care, with the parents assuming major responsibility for the child out of the home, or

(2) DHR assuming responsibility for voluntary protective placement of the child based on completion of a Temporary Voluntary Placement Agreement or of an Affidavit of Relinquishment of Parental Rights. However, affidavits of relinquishment will not be used until a decision to terminate parental rights has been reached.

(b) The department's first priority is to provide care for children who are the responsibility of DHR by court order. Therefore, voluntary protective placement can be made only when all the following exist:

(1) The parents and worker have explored and ruled out any other suitable relative, family friend, or other agency placement or plan for the care of the child.

(2) The child currently needs protection, or would because of lack of adequate care and supervision if DHR did not provide placement. If actual or potential abuse or neglect exists, a CANRIS report and inquiry must be made.

(3) There are sufficient spaces in licensed or certified foster homes or institutions for children who are the responsibility of DHR by court order.

(4) The county agrees to pay for the cost of the child's care when it is above what the parents contribute or above the child's own income.

(c) Before using county funds for the child being voluntarily placed, the worker must explore all other funding sources, such as child support, SSI, OASDI, VA benefits, etc. Since there is no court order, the child is not eligible for AFDC foster care or Medicaid.

(d) DHR must not pressure parents to voluntarily place a child in protective foster care. The parents' decision to request or consent to a voluntary placement must be documented in the child's and family's case records.

#### .042. *Screening Voluntary Protective Placement Requests.*

(a) If parents request DHR foster care for a child, the worker must first explore with the parents any service which would enable the child to remain in his own home. If an adequate plan cannot be arranged for the child to remain at home, the parents should be encouraged to assume major responsibility for the child by

arranging placement with relatives or in private or voluntary child care agencies. When parents arrange the placement, the placement facility should understand DHR's role as helper and that the child is not in DHR's conservatorship. Payment for the child's care is the parents' responsibility.

(b) The worker works with parents to ensure a suitable placement for the child. DHR staff are responsible for deciding whether the placement is adequate. The worker must help to arrange another kind of placement if the parents' choice of placement is not adequate. DHR must continue work with the parents and child until the child is in a permanent placement where he is protected adequately and has a guardian or conservator responsible for the on-going planning for his life, or he is returned to his parents' care and no longer needs protection.

(c) When the parents cannot find an adequate placement for the child, the worker must talk to the parents about a voluntary protective placement and decide whether to proceed with those arrangements or to seek a court order as a basis for placement of the child.

(d) Supervisory (or program director in the supervisor's absence) approval is required before placement for all voluntary protective placements. If the supervisor does not have a master's degree in social work and two years experience in child-placing, the placement must be reviewed by a staff member with these qualifications.

(e) A foster care intake study must be completed before the placement for all non-relative placements. The child should be prepared for the placement as stated in Rule 326.50.73.028.

#### *.043. Temporary Voluntary Protective Placements.*

(a) A temporary voluntary protective placement is when parents request or consent to protective placement of a child for less than 30 days, complete a Temporary Voluntary Placement Agreement, with the local unit, and establish a service plan with DHR for the child's care and return home.

(b) The service plan must be in writing. It must include, but is not limited to:

(1) The parents' agreement to continue to be involved in planning for the child. Planning for the child includes mutually determined and regular visitation with the child and contacts with DHR about the child. The worker must determine that the parents are able to continue involvement with the child before the child is voluntarily placed in temporary foster care.

(2) DHR's rules about visits, gifts, mail, and telephone calls.

(3) How often DHR will report to the child's parents about the child and what will be included in the report.

(4) Mutually determined steps for improvement of home conditions so that the child can return home.

(5) DHR's agreement with the parents that DHR may take court action to gain managing conservatorship of the child if the parents do not comply with the placement agreement.

(c) An Affidavit of Relinquishment of Parental Rights is not appropriate for and can not be sought or accepted as a basis for a temporary voluntary protective placement.

(d) Although the parents may request or consent to the child's placement, DHR has the responsibility to ensure adequate provision for the child when a protective services case has been opened. Even when parents voluntarily place the child with DHR, DHR must set conditions for and approve the placement and return of the child. In accepting a child for voluntary placement, DHR does not agree to return the child upon the parents' request. DHR can return the child only when the home is safe for the child. In this instance, DHR must seek a court order as the continuing legal basis for placement.

(e) During the first 30 days of placement, DHR must continue to plan with the parents to develop a more appropriate plan for the child. A longer placement is made only with one of the following:

(1) A social services program director's approval every 30 days. Approval must be based on the family conditions, the parents' compliance with the placement agreement, and whether county and DHR resources permit the placement to continue.

(2) A court order being obtained as a basis for the continued placement and for:

(A) securing DHR and federally funded foster care and/or medical coverage for the child in foster care;

(B) acting on the parents' non-compliance with the placement agreement or on other harmful conditions in the home, if either occurs. The placement is no longer considered voluntary once a court order has been obtained as a basis for continued placement.

(3) The parents request permanent placement for the child and complete an Affidavit of Relinquishment of Parental Rights, designating DHR as managing conservator. The placement is no longer considered temporary once there is an Affidavit of Relinquishment of Parental Rights.

#### *.044. Permanent Voluntary Protective Placements.*

(a) A permanent protective voluntary placement is when parents request permanent placement for a child and voluntarily complete an Affidavit of Relinquishment of Parental Rights designating DHR as managing conservator of the child.

(b) Permanent protective voluntary placements are appropriate:

(1) when parents voluntarily want to limit their parental rights and they are willing to continue being involved with the child's care and planning;

(2) when parents voluntarily want to give up their parental rights and to agree to the adoption of their child, and the court will rule on the parents' voluntary action. A complete social study must be made on the biological family and on the child being relinquished for adoption.

(c) Permanent protective voluntary placements are not appropriate when:

(1) DHR staff will be working with a family to return a child home;

(2) parents do not want to limit or lose parental rights to their children;

(3) a temporary placement is needed;

(4) parents want to limit their parental rights to their children but they are not willing to continue being involved with the child's on-going care and planning;

(5) parents want to voluntarily give up their parental rights and to agree to the adoption of their children, but the court will not rule on their voluntary action.

#### *.045. Affidavit of Relinquishment of Parental Rights and Affidavit of Status of Child*

(a) When parents want to voluntarily limit or give up their parental rights to a child, usually for adoption, an Affidavit of Relinquishment of Parental Rights must be signed by the parent(s) after the birth of the child. The Affidavit must be witnessed by two credible persons at least 18 years of age, and verified by a notary. When relinquishment is to DHR, the Affidavit must designate DHR as the managing conservator and should contain a consent to the placement of the child for adoption by DHR. This information will show the parents' desire that DHR plan for the child. The Affidavit may contain a waiver of citation.

(b) When a mother relinquishes a child, DHR must make every effort to obtain an Affidavit of Relinquishment of Parental Rights from the father of the child whether married to the mother or not. This relinquishment from the unwed father does not commit him to support the child.

(c) If the child is not the legitimate child of the father, an Affidavit of Status of Child must be executed by the mother any time after the first trimester of the pregnancy, witnessed by two credible persons at least 18 years of age, and verified by a notary. When relinquishment is to DHR, the Affidavit of Status of Child should name the father, if known, who must be cited along with the mother in a suit to terminate the parent-child relationship.

(d) Department policy is to seek from the court an order terminating the parent-child relationship when DHR seeks an Affidavit of Relinquishment of

Parental Rights. The judicial termination of the parent-child relationship is documentation that the relinquishing parents understood the finality of their act and is a stronger base upon which to make permanent placement plans for the child. In addition, DHR and federally funded foster care requires that DHR have a court order giving the agency responsibility for the care and placement of the child. If the parents join with DHR in the petition to terminate the parent-child relationship, a stronger case for the finality of the termination is accomplished.

(e) An Affidavit of Relinquishment of parental rights designating the department as managing conservator of the child is irrevocable. Therefore, DHR staff cannot seek an Affidavit of Relinquishment from parents when work with the family to return the child home is included in the family and child's service plans. When DHR seeks an Affidavit of Relinquishment, the worker must clearly state to the parents that this means the department will no longer work with them to return children home. To the contrary, it means that the department will seek from the court permanent and total separation of the child from the family.

(f) When designated managing conservator of a child in an Affidavit of Relinquishment of parental rights which is not followed up by a court order, DHR has the rights and duties of a possessory conservator. DHR does not have the full rights and duties usually retained by a managing conservator under Section 14.02(b) of the Texas Family Code. Therefore, when DHR accepts an Affidavit of Relinquishment of parental rights, DHR must continue to involve the child's biological parents in:

- (1) giving consent for medical exams;
- (2) giving consent for non-emergency medical and surgical treatment;
- (3) giving consent for psychiatric exams and treatment;
- (4) establishing the child's legal domicile;
- (5) the duty of moral and religious training;
- (6) providing the child with education;
- (7) the right to services and earnings of a child;
- (8) consenting to marriage and enlistment in the armed forces;
- (9) representing the child in legal action and making other decisions of substantial legal significance about the child;

(10) receiving and giving receipt for periodic payments for support of the child and holding or disbursing the funds for the child's benefit;

(11) financial child support;

(g) If a court hearing is held based on an Affidavit of Relinquishment of parental rights, the court must name the department as managing conservator if parental rights are terminated, unless the court finds that this would not be in the child's best interest.

When named managing conservator in a court order based on an affidavit, DHR has the full rights and duties usually retained by a managing conservator. Continuing biological parental involvement would then not be necessary, unless in the best interest of the child.

(h) Local DHR staff must be sure the court will grant a hearing on the basis of an Affidavit before the staff seek to obtain an affidavit. The court hearing should be held at the earliest possible time after DHR files a petition based on the affidavit. A petition based on the affidavit must be filed immediately upon receiving it. Until the hearing is held and DHR appointed managing conservator, the biological parents must agree to continue to be involved with the department and child to fulfill the parents' continuing responsibilities.

(i) Even though the Texas Family Code provides a procedure for terminating parental rights based on the Affidavit of Relinquishment in the adoption proceedings, DHR's limited legal authority which requires the biological parents' continued involvement with the child during the period of adoption placement precludes DHR's seeking the affidavit unless the department can obtain a court decree on the basis of the affidavit at the time the affidavit is obtained.

(j) If DHR is named as managing conservator in an Affidavit of Relinquishment without DHR's knowledge or consent, the department must accept the child on the basis of the Affidavit. The department must carry out its duties under the affidavit as delineated by the Texas Family Code. In this instance, the worker must maintain contact with the relinquishing parent, when the parent is available, and must seek a court order finalizing the affidavit or granting the department sufficient authority to plan and care for the child. The placement is no longer considered voluntary once a court order has been obtained as a basis for confirmed placement.

Doc No 776990

## Notice of Adopted Rules

The Texas Department of Human Resources has adopted new rules regarding Child Welfare Services, as proposed in the November 1, 1977, issue of the *Texas Register* (2 TexReg 4169). Because of the length of the text, the following rules will not be published in this issue but will be published serially. The effective date for all the rules is January 3, 1978.

The rules may be inspected in the offices of the Texas Register Division, Room 503, Sam Houston Building, Austin, and at the Texas Department of Human Resources, John H. Reagan Building, Austin.

Following is a list of the adopted rules, including subchapter titles, rule code numbers, and docket numbers.

Foster Care Placement Services  
326.50.74.005-.068  
Doc No 776992

Adoption Services  
326.50.75.041-.071  
Doc No. 776994

Out-of-Town Inquiries  
326.50.76.030-.044  
Doc No 776996

Case Closure Procedure  
326.50.77.007  
Doc No 776998

Child Welfare Services and the Community  
326.50.78.015-.023  
Doc No. 777000

Child Welfare Fiscal System  
326.50.79.003-.006  
Doc. No. 777002



## State Board of Insurance Rating and Policy Forms

Fixing Rate of Automobile Insurance  
059.05.01

The State Board of Insurance has amended its Rule 059.05.01.001, which adopted by reference the Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements. The amendments are attached hereto and incorporated herein by reference.

The amendment to Automobile Manual Rule 131 and Endorsement A927 is intended to make automobile physical damage coverage applicable, without addi-

tional premium charges to citizens band radios, including accessories, equipment, and antennas for use therewith, that are designed and manufactured as an integral part of a unit in combination with one or more of the following: AM radio, FM radio, or tape player. Automobile physical damage would only be applicable to such "combination" unit if they are physically installed in the vehicle dash or console.

The change in Automobile Manual Rule 131 and Endorsement A927 is felt to be desirable since such dash or console installed combination units appear to be less subject to theft. In addition, determination of the actual value of each element of such combination units present claim adjustment problems.

The new Endorsements A929 and TX-10-81 are intended on van-type vehicles to exclude from automobile physical damage coverage additional parts, equipment, furnishings, fixtures, or finishing (including special paint, murals, or graphics), commonly called "customizing," not available from the original manufacturer of the vehicle as standard parts, equipment, furnishings, fixtures, or finishing. The exclusion of coverage would not apply if the value or original cost new of such additional parts, equipment, furnishings, fixtures, or finishing is reported to the insurance company by the insured and such value or cost is included in calculation of the physical damage coverage premiums applicable to such vehicles.

These amendments are adopted pursuant to the authority of the Texas Insurance Code, Article 5.01.

*001. Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements.* The State Board of Insurance adopts by reference the attached Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements, as amended in November, 1977. This document is published by and available from the Texas Automobile Insurance Service Office, Suite 350, American Bank Tower, 221 West 6th Street, Austin, Texas 78701.

Doc No 777005

## Policy Forms and Endorsements

### 059.05.06.001

The State Board of Insurance has amended its Rule 059.05.06.001, which adopted by reference the Standard Provisions for Automobile Policies written on and after October 1, 1974. The amendments are attached hereto and incorporated herein by reference.

The amendment to Endorsement A927 is intended to make automobile physical damage coverage applicable to citizens band radios, including accessories, equipment, and antennas for use therewith, that are

designed and manufactured as an integral part of a unit in combination with one or more of the following: AM radio, FM radio, or tape player. Automobile physical damage would only be applicable to such "combination" unit if they are physically installed in the vehicle dash or console.

The change in Endorsement A927 is felt to be desirable since such dash or console installed combination units appear to be less subject to theft. In addition, determination of the actual value of each element of such combination units present claim adjustment problems.

The new Endorsement TX-10-81 is intended on van-type vehicles to exclude from automobile physical damage coverage additional parts, equipment, furnishings, fixtures, or finishing (including special paint, murals, or graphics), commonly called "customizing," not available from the original manufacturer of the vehicle as standard parts, equipment, furnishings, fixtures, or finishing. The exclusion of coverage would not apply if the value or original cost new of such additional parts, equipment, furnishings, fixtures, or finishing is reported to the insurance company by the insured and such value or cost is included in calculation of the physical damage coverage premiums applicable to such vehicles.

These amendments are adopted pursuant to the authority of the Texas Insurance Code, Article 5.06.

*001. Standard Provisions for Automobile Policies Written On and After October 1, 1974.* The State Board of Insurance adopts by reference the attached Standard Provisions for Automobile Policies Written On and After October 1, 1974, as amended in November, 1977. This document is published by and available from the Texas Automobile Insurance Service Office, Suite 350, American Bank Tower, 221 West 6th Street, Austin, Texas 78701.

Doc No 777006

### 059.05.06.002

The State Board of Insurance has amended its Rule 059.05.06.002, which adopted by reference the Standard Provisions for Automobile Policies written on and after April 1, 1955. The amendments are attached hereto and incorporated herein by reference.

The amendment to Endorsement A927 is intended to make automobile physical damage coverage applicable to citizens band radios, including accessories, equipment, and antennas for use therewith, that are designed and manufactured as an integral part of a unit in combination with one or more of the following: AM radio, FM radio, or tape player. Automobile physical damage would only be applicable to such "combination"

unit if they are physically installed in the vehicle dash or console.

The change in Endorsement A927 is felt to be desirable since such dash or console installed combination units appear to be less subject to theft. In addition, determination of the actual value of each element of such combination units present claim adjustment problems.

The new Endorsement A929 is intended to exclude from automobile physical damage coverage on van-type vehicles the additional parts, equipment, furnishings, fixtures, or finishing (including special paint, murals, or graphics), commonly called "customizing," not available from the original manufacturer of the vehicle as standard parts, equipment, furnishings, fixtures, or finishing. The exclusion of coverage would not apply if the value or original cost, new, of such additional parts, equipment, furnishings, fixtures, or finishing is reported to the insurance company by the insured and such value or cost is included in calculation of the physical damage coverage premiums applicable to such vehicles.

These amendments are adopted pursuant to the authority of the Texas Insurance Code, Article 5.06.

*.002. Standard Provisions for Automobile Policies Written On and After April 1, 1955* The State Board of Insurance adopts by reference the attached Standard Provisions for Automobile Policies Written On and After April 1, 1955, as amended in November, 1977. This document is published by and available from the Texas Automobile Insurance Service Office, Suite 350, American Bank Tower, 221 West 6th Street, Austin, Texas 78701.

Issued in Austin, Texas, on December 12, 1977.

Doc No 777007 Pat Wagner  
Deputy Chief Clerk  
State Board of Insurance

Effective Date January 3 1978

For further information please call (512) 475-3486

## Accident and Sickness Insurance

### Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies 059.37.01.010

Under the authority of the Texas Insurance Code, Article 3.70-1, the State Board of Insurance has amended Rule 059.37.01.110 to read as follows:

*.110. Effective Date.* These rules, as adopted by the board, shall be effective 20 days from the date they are filed, as adopted by the board, with the Office of the Secretary of State and shall be applicable to all individual accident and sickness insurance policies and subscriber contracts of hospital and medical and dental service associations filed for approval on and after 30 days from such date. Policies or contracts which have been approved prior to the effective date of these rules and are not in compliance with these rules may be continued to be used until May 1, 1978, unless approval is specifically withdrawn as provided under Vernon's Annotated Texas Statutes, Insurance Code, Article 3.42. All such policies or contracts delivered or issued for delivery in this state, after May 1, 1978, shall be in compliance with these rules.

Doc No 777143

### 059.37.01.021, .071-.074

The State Board of Insurance has amended the subchapter of rules entitled Minimum Standards and Benefits and Readability for Accident and Health Insurance Policies by adding a new rule, 059.37.01.021, and by amending Rules 059.37.01.071-.074 and Exhibit A to clarify the provisions regarding maternity benefits and complications of pregnancy. Exhibit A has been amended to make pregnancy and childbirth specified exclusionary subjects for all accident and sickness insurance policies.

By authority of Texas Insurance Code, Article 3.70-1, the State Board of Insurance has adopted said rules to read as follows:

*.021 Policy Definition of Complication of Pregnancy.* Complications of pregnancy shall be treated, in all cases, as any other sickness. Complications of pregnancy mean:

(a) Conditions requiring hospital confinement (when the pregnancy is not terminated) whose diagnoses are distinct from pregnancy but are adversely affected by pregnancy, including but not limited to acute nephritis, cardiac decompensation, missed abortion, and similar medical and surgical conditions of comparable severity, but shall not include false labor, occasional spotting, physician prescribed rest during the period of pregnancy, morning sickness, hyperemesis gravidarum, pre-eclampsia, and similar conditions associated with the management of a difficult pregnancy not constituting a nosologically distinct complication of pregnancy; and

(b) Nonelective cesarean section, termination of ectopic pregnancy, and spontaneous termination of pregnancy, occurring during a period of gestation in which a viable birth is not possible.

*.071. Minimum Standards for Basic Hospital Expense Coverage* Basic hospital expense insurance is a policy of accident and health insurance which provides coverage for a period of not less than 31 days during any one period of confinement for each person insured under the policy for the expense incurred for necessary treatment and services rendered as a result of an injury or sickness for at least the following:

(a) Daily hospital room and board in an amount not less than:

- (1) 80 percent of the charges for semiprivate room accommodations; or
- (2) \$30 per day.

(b) Miscellaneous hospital services for expenses incurred for the charges made by the hospital for services and supplies which are customarily rendered by the hospital and provided for use only during the period of continuous hospital confinement in an amount not less than either 80 percent of the charges incurred, up to at least \$1,000 or 10 times the daily hospital room and board benefit rate

(c) Hospital outpatient services:

- (1) Hospital services on the day surgery is performed in an amount not less than \$50; and
- (2) Hospital services rendered within 72 hours after accidental injury, in an amount not less than \$50; and
- (3) X-ray and laboratory tests to the extent that benefits for such services would have been provided, in an amount not less than \$100, if rendered to an inpatient of the hospital

(d) Benefits provided under (a) and (b) may not be provided, subject to a combined deductible amount not in excess of \$100 per period of confinement.

(e) If hospital confinement maternity benefits are included within the scope of policy coverage, then the amount of the minimum benefits for each covered pregnancy shall be the actual expenses incurred according to the policy terms, up to an amount that is equal to 10 times the minimum daily hospital room and board benefit

*.072. Minimum Standards for Basic Medical-Surgical Expense Coverage* "Basic medical-surgical expense coverage" is a policy of accident and sickness insurance which provides coverage for each person insured under the policy for the expenses incurred for the necessary services rendered by a physician for treatment of an injury or sickness for at least the following:

(a) Surgical services:

(1) In amounts not less than those provided on a fee schedule based on the relative values contained in the 1969 California Relative Value Schedule or other acceptable relative value scale of surgical procedures, up to a maximum of at least \$500 for any one procedure; or

(2) Not less than 80 percent of the usual, customary, and reasonable charges. Surgical schedules shall include a provision stipulating coverage for procedures not specifically listed in the schedules and not otherwise excluded by the policy, and benefits therefore shall be consistent with the benefits for comparable procedures

(b) Anesthetic services, consisting of administration of necessary general anesthesia and related procedures in connection with covered surgical services rendered by a physician other than the physician (or his or her assistant) performing the surgical services:

(1) in an amount not less than 80 percent of the usual, customary, and reasonable charges; or

(2) 15 percent of the "surgical services" benefit.

(c) In-hospital medical services, consisting of attending physician services rendered to a person who is a bed patient in a hospital for treatment of sickness or injury other than that for which surgical care is required, in an amount not less than (1) 80 percent of the usual, customary, and reasonable charges, or (2) five dollars per call, one call per day, for at least 21 such calls during "one period of confinement"

(d) If obstetrical-surgical benefits are included within the scope of policy coverage, then the benefits for each covered pregnancy for obstetrical-surgical expenses incurred shall be based upon the relative value scale of surgical procedures referred to in (a) above.

*.073. Minimum Standards for Hospital Confinement Indemnity Coverage* "Hospital confinement indemnity coverage" is a policy of accident and sickness insurance which provides daily benefits for hospital confinement on an indemnity basis in an amount not less than \$15 per day or \$100 per week and not less than 31 days during any "one period of confinement" for each person insured under the policy. A one-day or two-day elimination period may be used when "one period of confinement" is not less than 31 days and not more than 364 days. A three-day elimination period may be used when "one period of confinement" is 365 days or more. If a hospital confinement policy, whether styled as an indemnity policy or however styled, includes confinement for pregnancy within the scope of its coverage, then the minimum benefits payable for each covered pregnancy shall be the insured loss or expense up to an amount no less than 10 times the minimum daily benefit of the policy.

*.074. Minimum Standards for Major Medical Expense Coverage* "Major medical expense coverage" is an accident and sickness insurance policy which provides hospital, medical, and surgical expense coverage as follows:

(a) An aggregate maximum of not less than \$10,000;



(b) A co-payment by the covered person shall not exceed 20 percent of covered charges in policies providing aggregate maximum benefits of \$10,000 and 25 percent in all other policies;

(c) A deductible stated on a basis of one or more of the following:

- (1) per person;
- (2) per family;
- (3) per illness;
- (4) per benefit period; or
- (5) per year, or a combination of such bases not

to exceed five percent of the aggregate maximum limit under the policy, unless the policy is written to complement underlying hospital and medical insurance, in which case such deductible may be increased by the amount of the benefits provided by the underlying insurance. In any such policy with internal limits, deductibles may not be based on the benefit deductible concept.

(d) Policies which contain a variable deductible provision, i.e., a provision which, in addition to a stated basic or minimum deductible amount chosen by the policyholder, includes a deductible amount to the extent of any other medical and hospital expense benefits available to the policyholder under any other policy, if any, shall conform to the following criteria:

(1) The right of renewal shall be no more limited than that provided in Rule 059.37.01.050(b).

(2) The policy provides for an increase in the maximum amount of benefits in a sum of at least three dollars for each one dollar of other medical expense benefits used as part of the deductible.

(e) Benefits shall be provided under major medical expense coverage for each covered person for at least:

(1) Daily hospital room and board expenses, prior to application of the co-payment percentage, for not less than \$50 daily (or in lieu thereof the average daily cost of semiprivate room rate in the area where the insured is confined) for a period of not less than 31 days during continuous hospital confinement;

(2) Miscellaneous hospital services, prior to application of the co-payment percentage, for an aggregate maximum of not less than \$1,500 or 15 times the daily room and board rate if specified in dollar amounts;

(3) Surgical fees, prior to application of co-payment percentage, to a maximum of not less than \$600 for the most severe operation with the amounts provided for other operations reasonably related to such maximum amount.

(4) Anesthesia services, prior to application of the co-payment percentage, for a maximum of not less than 15 percent of the covered surgical fees or, alternatively, if the surgical schedule is based on relative values, not less than the amount provided therein for anesthesia services at the same unit value as used for

the surgical schedule:

(5) Doctor visits, in or out of the hospital, with minimum dollar amounts per visit, prior to application of the co-payment percentage, equal to not less than \$10 per visit, covering at least one visit per day and for an aggregate maximum of such covered charges of not less than \$600;

(6) Out-of-hospital diagnostic x ray and tests, prior to application of the co-payment percentage, for an aggregate maximum of such covered charges of not less than \$600.

(7) No fewer than three of the following additional benefits, prior to application of the co-payment percentage, for an aggregate maximum of such covered charges of not less than \$1,000:

(A) in-hospital private duty registered nurse services;

(B) convalescent nursing home care;

(C) diagnosis and treatment by a radiologist or physiotherapist;

(D) rental of special medical equipment, as defined by the insurer in the policy;

(E) artificial limbs or eyes, casts, splints, trusses, or braces;

(F) treatment for functional nervous disorders, and mental and emotional disorders.

(G) out-of-hospital prescription drugs and medications.

(f) If hospital confinement maternity benefits are included within the scope of policy coverage, then the amount of the minimum benefits for each covered pregnancy, prior to application of the co-payment percentage, shall be the actual expenses incurred according to the policy terms up to an amount that is equal to 10 times the minimum daily hospital room and board benefit.

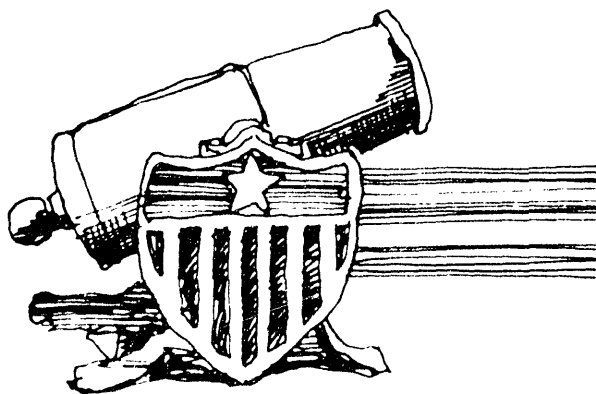
Issued in Austin, Texas, on December 13, 1977.

Doc No 777144 Pat Wagner  
Chief Clerk  
State Board of Insurance

Effective Date January 2 1978

For further information please call (512) 475-2551

This section includes summarized opinions in cases on appeal from administrative decisions of local, state, and federal governments and agencies. The section contains opinions of the U.S. Supreme Court, U.S. Circuit Courts of Appeals, U.S. District Courts, the Texas Supreme Court, and Texas Courts of Civil Appeals. Selected opinions of particular importance dealing with other than administrative appeals may also be included here from time to time. State court opinions are cited in the *Texas Lawyers' Weekly Digest*. Opinions from federal courts are cited in *The United States Law Week*.



## 5th U.S. Circuit Court of Appeals

### Marshall v. Daniel Construction Company

The secretary of labor, by promulgating an Occupational Safety and Health Act regulation giving employees the right to refuse to work under conditions that, in their opinion, present a danger of serious injury, gave workers, the U.S. Court of Appeals for the Fifth Circuit discovers, exactly what Congress refused to give them in the act itself. Thus, the court concludes that the regulation is invalid because it exceeds the secretary's authority under the act.

The act expressly provides a procedure by which an employee can seek to have a dangerous working condition enjoined. Under this procedure, the employee's role is limited to notifying the secretary of the danger. Before the danger can be enjoined, an OSHA inspector must conclude that an imminent danger exists and must convince the secretary, who can then seek a

federal court injunction. Nowhere does the act permit an employee to determine that a dangerous condition exists and to refuse to work because of it.

The court also finds that this right cannot be implied from the act or its legislative history. Congress specifically rejected a so-called right to "strike with pay" provision and also refused to give OSHA inspectors the right to prohibit employment, for up to five days, where an imminent danger exists. The rejection of the "strike with pay" provision demonstrates a congressional fear that workers might abuse this right. Apparently believing that workers might also attempt unduly to influence OSHA inspectors if they were given authority to issue administrative orders restraining business operations, Congress gave federal courts the sole authority to issue such injunctions. (46 USLW 1087)

Filed November 21, 1977, New Orleans  
Doc. No. 20128

## 10th Court of Civil Appeals

### Lampasas Federal Savings and Loan Association v. Lewis

The Savings and Loan Commissioner (the defendant), while not personally presiding at a hearing on a savings and loan application, testified that he personally read the entire record and reviewed only those exhibits or portions thereof necessary to clarify the testimony of the witnesses before making a decision. The defendant is the only agency official charged with the responsibility of rendering a final decision.

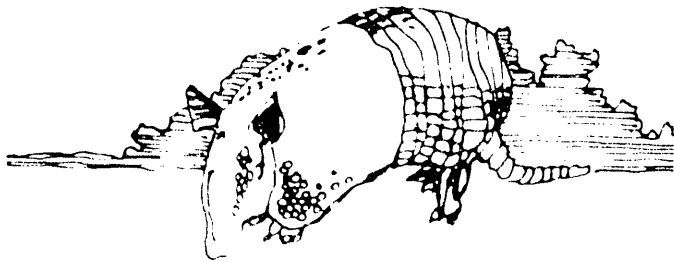
*Held*—Under these facts, the commissioner has read the record within the meaning of the Revised Civil Statutes, Article 6252-13a, Section 15, thereby dispensing with the necessity of serving a proposal for decision on the parties.

To render a summary of evidence admissible, the proponent has the burden to show (1) that the underlying records were voluminous, (2) that such records were admissible, and (3) that such records were accessible to the opposing party.

The requirement of the Revised Civil Statutes, Article 6252-13a, Section 16(d), that an administrative decision must be rendered within 60 days after the date the hearing is finally closed, is directory. No harm is shown here, where 68 days expired before a decision. (14 TLWD 48, at 2)

Filed November 10, 1977, Waco  
Doc. No. 20127

The Open Meetings Act (Article 6252-17, Texas Civil Statutes) requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. A political subdivision covering all or part of four or more counties, or an institution of higher education, must have notice posted for at least 72 hours before the scheduled meeting time. Notice of an emergency meeting or an emergency addition or amendment to an agenda must be posted for at least two hours before the meeting is convened. Although some notices may be received and filed too late for publication before the meetings are held, all filed notices will be published in the *Register*. Each notice published includes the date and time of filing. Notices are posted on the bulletin board outside the offices of the Secretary of State on the first floor in the East Wing of the State Capitol.



## Coordinating Board, Texas College and University System

### Meeting

The Public Senior College and University Formula Advisory Committee of the Coordinating Board, Texas College and University System, will meet at 9:30 daily, Thursday and Friday, January 5 and 6, 1978, in Room 2120, Joe C. Thompson Conference Center, 26th and Red River Streets, Austin. The committee will analyze the fiscal impact of formula recommendations for the 1980-81 biennium, and review summary of appropriations by element of cost for fiscal 1978 and the amounts generated by recommended formulas for fiscal 1980 and 1981.

Additional information may be obtained from Dr. Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, telephone (512) 475-4361.

Filed December 15, 1977, 10:16 a.m.

Doc. No. 777156

### Meeting

The Family Practice Residency Advisory Committee of the Coordinating Board, Texas College and University System, will meet on Wednesday, January 18, 1978, 1 p.m. in the second floor conference room, Park Lane East Building, 55 North Interstate Highway 35, Austin. The committee will determine further recommendations for the Coordinating Board on criteria for approval of funding family practice residency training programs.

Additional information may be obtained from Dr. Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, telephone (512) 475-4361.

Filed December 15, 1977, 10:16 a.m.

Doc. No. 777157

## Texas State Board of Dental Examiners

### Meeting

The Texas State Board of Dental Examiners will meet at 9 a.m. daily, Friday and Saturday, January 27 and 28, 1978, in the Vista Room, Fairmont Hotel, Dallas.

The board will consider adoption of or amendments to the rules and regulations pertaining to dentists and all persons or businesses under its jurisdiction, consider Advisory Board appointment, and conduct scheduled disciplinary hearings and regular board business.

Additional information may be obtained from Carl C. Hardin, Jr., 718 Southwest Tower, 7th and Brazos, Austin, Texas 78701, telephone (512) 475-2443.

Filed December 13, 1977, 9:35 a.m.

Doc. No. 776962

## Texas Health Facilities Commission

### Emergency Addition to Agenda

An emergency addition was made to the agenda of a meeting of the Texas Health Facilities Commission held on Thursday, December 15, 1977, 10 a.m. in Suite 305, the Jefferson Building, 1600 West 38th, Austin.

Due to an urgent public necessity, the commission considered applications from: Francis E. and Joseph A. O'Neill, doing business as O'Neill and Associates, P.A., San Antonio, for a declaratory ruling; and Brazos Valley MH/MR Center for the Robertson County Activity Center, Hearne, for an exemption certificate.

Additional information may be obtained from William D. Darling, P.O. Box 15023, Austin, Texas 78761, telephone (512) 475-6940.

Filed December 14 1977 11:39 a.m.  
Doc No 777146



## Texas Department of Human Resources

### Meeting

The Texas Board of Human Resources of the Texas Department of Human Resources will meet on Thursday, December 22, 1977, 9 a.m., in Room 406, Reagan Building, Austin.

The board will consider the following items: cost-related reimbursement of nursing homes; Vendor Drug Program; a report on ambulance services field visit; presentation by Upjohn, Titles XIX and XX family planning services; Food Stamp Program; approval of final rules; and technical amendments. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Bill Woods, Texas Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, telephone (512) 475-6297.

Filed December 13 1977 9:33 a.m.  
Doc No 776963

## State Board of Insurance Meeting

The State Board of Insurance will meet on Wednesday, December 21, 1977, 2 p.m., in Room 408, 1110 San Jacinto, Austin, to discuss an amendment to the plan of operation for Texas Catastrophe Property Insurance Association.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed December 13 1977 4:33 p.m.  
Doc No 776981

### Hearing

The Commissioner's Hearing Section of the State Board of Insurance will meet on Tuesday, December 27, 1977, 10 a.m., in Room 343, 1110 San Jacinto Street, Austin. The board will consider an application from Wausau Service Corporation, Wausau, Wisconsin, to acquire control of VICO County Mutual Insurance Company, Fort Worth, pursuant to the Texas Insurance Code, Article 21-49-1, Section 5.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed December 13 1977 9:34 a.m.  
Doc No 776964

### Hearing

The Commissioner's Hearing Section of the State Board of Insurance will meet on Tuesday, December 27, 1977, 1:15 p.m., in Room 343, 1110 San Jacinto Street, Austin. The board will consider an application from Proprietors' Life Assurance Company, Delaware, Ohio, for admission to Texas, pursuant to the Texas Insurance Code, Article 3-24-1.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed December 13 1977 9:34 a.m.  
Doc No 776965

## Hearing

The Commissioner's Hearing Section of the State Board of Insurance will meet on Tuesday, December 27, 1977, 2 p.m., in Room 343, 1110 San Jacinto Street, Austin. The board will consider an application from Proprietors' Insurance Company, Delaware, Ohio, for admission to Texas pursuant to the Texas Insurance Code, Articles 221 and 820.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed December 13, 1977, 9:34 a.m.

Doc. No. 776966

## Hearing

The Commissioner's Hearing Section of the State Board of Insurance will meet on Wednesday, December 28, 1977, 9:30 a.m., in Room 343, 1110 San Jacinto Street, Austin. The board will consider an application from Max Martinez Funeral Insurance Company, San Antonio, for a reinsurance agreement with Max Martinez Funeral Insurance Association, San Antonio, pursuant to the Texas Insurance Code, Article 2215.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed December 13, 1977, 9:34 a.m.

Doc. No. 776967

## Hearing

The Commissioner's Hearing Section of the State Board of Insurance will meet on Wednesday, December 28, 1977, 1 p.m., in Room 343, 1110 San Jacinto Street, Austin. The board will consider an application from J. C. Penney Casualty Insurance Company, Westerville, Ohio, for merger of Great American of Dallas Insurance Company, Dallas, and Great American of Dallas Fire and Casualty Company, Dallas, pursuant to the Texas Insurance Code, Article 2125.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed December 13, 1977, 9:34 a.m.

Doc. No. 776968

## Hearing

The Commissioner's Hearing Section of the State Board of Insurance will meet on Thursday, December 29, 1977, 10 a.m., in Room 343, 1110 San Jacinto Street, Austin. The board will consider an application for merger of Gibraltar Life Insurance Company of America, Dallas, and American Gibraltar Insurance Company, Denver, Colorado, pursuant to the Texas Insurance Code, Article 2149.1 and 2125.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed December 13, 1977, 9:34 a.m.

Doc. No. 776969

## Hearing

The Commissioner's Hearing Section of the State Board of Insurance will meet on Friday, December 30, 1977, 9:30 a.m., in Room 343, 1110 San Jacinto Street, Austin. The board will consider an application from Peoples Life Insurance Company, Tyler, for a reinsurance agreement with General Protective Life Insurance Company, Bellaire, pursuant to the Texas Insurance Code, Articles 2125, 2149.1, Sections 4(d) and 5.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed December 13, 1977, 9:34 a.m.

Doc. No. 776970



## Texas Commission on Jail Standards

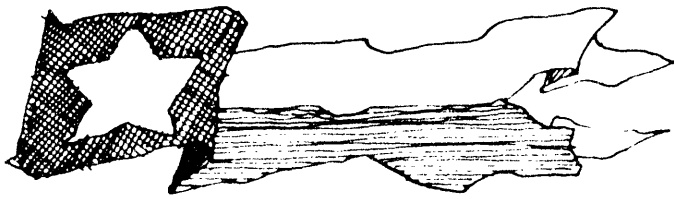
### Emergency Addition to Agenda

An emergency addition was made to the agenda of a meeting of the Texas Commission on Jail Standards held on Monday, December 19, 1977, 9 a.m., in Room 101, 1414 Colorado, Austin. The commission considered applications for variances from the following counties: Caldwell, Childress, Comal, Ector, Goliad, Gregg, Lavaca, Orange, Randall, Roberts and Willacy. Also discussed were the requirements for violent cells and the need for an attorney general opinion on Rule 217.14.003.

Additional information may be obtained from Guy Van Cleave, Suite 500, 1414 Colorado, Austin, Texas 78701, telephone (512) 475-2716.

Filed December 15 1977 10 17 a.m.

Doc No 777160



## State Board of Morticians

### Emergency Addition to Agenda

An emergency addition was made to the agenda of a meeting of the State Board of Morticians held on Wednesday, December 14, 1977, 9 a.m., at 1513 South Interstate 35, Austin.

The agenda included the following: request of Ky Douglas Griffin for consideration of his apprenticeship period, clarification on the forthcoming embalmers examinations for re-takes, appearance of Richard E. Carpenter regarding reinstatement of the funeral directors and embalmers license he allowed to lapse in 1961 for nonpayment, request by John Bozzell for consideration of his funeral directors apprenticeship in May, 1977, and a request from Juan Garza.

Additional information may be obtained from James W. McCammon, 1513 South Interstate 35, Austin, Texas 78741, telephone (512) 442-6721.

Filed December 13 1977 3 41 p.m.

Doc No 776978

## Board of Pardons and Paroles

### Meetings

Meetings of the Board of Pardons and Paroles will be held at 9 a.m. daily, Tuesday through Friday, December 27-30, 1977, in Room 711, Stephen F. Austin Building, Austin. The board will review cases of inmates for parole consideration, act on emergency reprieve requests and other acts of executive clemency, review reports regarding persons on parole and procedures affecting the day-to-day operation of support staff, review and initiate needed rule changes relating to general operation, executive clemency, parole, and all hearings conducted by the agency, and take action upon gubernatorial directives.

Additional information may be obtained from Ken Casner, Room 711, Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-3363.

Filed December 13 1977 9 51 a.m.

Doc No 776977

## Texas Parks and Wildlife Department

### Meeting

The Fisheries Division Resource Protection Branch of the Texas Parks and Wildlife Department will meet on Tuesday, January 10, 1978, 2 p.m., in Room A 200, 4200 Smith School Road, Austin. The division will consider an application of Fort Bend County to amend non-revenue Permit No. 76-075 to include a 16th site, where they propose to remove approximately 1,000 cubic yards of gravel per month by means of a dragline from the Brazos River in Fort Bend County. Location of the operation will be approximately 2.5 miles west from Simonton, adjacent to the properties of Larry Verne, Richard F. Kral, and Jim Fann. The gravel is to be used for construction of roads.

Additional information may be obtained from Chester D. Harris, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4831.

Filed December 12 1977 9 59 a.m.  
Doc No 776940

## Meeting

The Fisheries Division Resource Protection Branch of the Texas Parks and Wildlife Department will meet on Tuesday, January 17, 1977, 2 p.m., in Room A-200, 4200 Smith School Road, Austin.

The division will consider an application by the City of Llano for a permit to remove approximately 12,000 cubic yards of sand per month by means of a front-end loader from the Llano River at a location where Olive Street intersects the Llano River in Llano, Llano County. The dredging area extends for 600 feet adjacent to the properties of J. T. Walker, A. C. McDougal, August Otto, Jr., and Lois Leverett. The sand will be used for construction of roads.

Additional information may be obtained from Chester D. Harris, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4831.

Filed December 14 1977 10 09 a.m.  
Doc No 777009

## Texas Pork Producers Board

### Meeting

The Texas Pork Producers Board will meet on Saturday, January 7, 1978, at noon, in the Castilian Room, Chariot Inn, North Interstate Highway 35, Austin. The board will consider the budget report, committee report, and old and new business.

Additional information may be obtained from Ken Horton, Northwest Office Building, Room 108, 8330 Burnet Road, Austin, Texas 78758.

Filed December 14 1977 10 52 a.m.  
Doc No 777147

## Public Utility Commission of Texas

### Emergency Addition to Agenda

An emergency addition has been made to the agenda of a hearing to be held by the Public Utility Commission of Texas on Tuesday, December 20, 1977, 9 a.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin. The commission will consider an appeal of Tri County Electric Cooperative, Inc., regarding a resolution and order of the City of Keller and a complaint against Texas Power and Light Company (Docket No. 627).

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 13 1977 3 18 p.m.  
Doc No 776975

### Meeting

The Public Utility Commission of Texas will meet on Tuesday, December 20, 1977, 9 a.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin. The commissioners will issue final orders, hear oral argument, and rule on motions for rehearing. The complete agenda is posted in the East Wing of the State Capitol.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 13 1977 3 45 p.m.  
Doc No 776956

### Emergency Hearings

The Public Utility Commission of Texas will conduct hearings in emergency session on Tuesday, December 20, 1977, 4 p.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin. The commission will consider an application of Bi County Water Supply Corporation for a rate increase (Docket No. 639). This hearing was originally scheduled for December 21 at 8 a.m.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 14 1977 3 43 p.m.  
Doc No 777149

## Hearing

The Public Utility Commission of Texas will conduct a hearing on Wednesday, December 21, 1977, 2 p.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin. The commission will consider an application for the sale of Trail's End Water Company.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 13, 1977 3:17 p.m.

Doc. No. 776976

## Hearing

The Public Utility Commission of Texas will conduct a hearing on Thursday, December 29, 1977, 9 a.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin. The commission will consider applications of River Club Water Company and River Ridge Water Utilities for certificates of convenience and necessity to provide water utility service within Montgomery County (Docket Nos. 718 and 978).

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 13, 1977 3:17 p.m.

Doc. No. 776977

## Hearing Rescheduled

The Public Utility Commission of Texas will conduct a hearing on Tuesday, January 3, 1977, 9 a.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin. The commission will consider an application of Southern Sanitary Corporation for a rate increase (Docket No. 554). This hearing was originally scheduled for November 28.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 14, 1977 3:43 p.m.

Doc. No. 777150

## Hearing

The Public Utility Commission of Texas will conduct a hearing on Friday, January 6, 1977, 10 a.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to consider an application of Douglas Utility Company for a rate increase and for a certificate of convenience and

necessity within Harris County (Docket No. 899). The commissioners will consider the overall request for a rate increase and also a motion for temporary relief under which the rates for unmetered service would increase, pending a final order, the pending application for a certificate of convenience and necessity will also be considered.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 14, 1977 3:43 p.m.

Doc. No. 777151

## Hearing

The Public Utility Commission of Texas will conduct a hearing on Friday, January 13, 1977, 10 a.m., in Suite 400N, 7800 Shoal Creek Boulevard, Austin. The commission will consider an application of MacBee Water Supply Corporation for a rate increase (Docket No. 864).

Additional information may be obtained from Roy Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed December 14, 1977 3:43 p.m.

Doc. No. 777152

## Railroad Commission of Texas

### Emergency Meeting

The Transportation Division of the Railroad Commission of Texas met in emergency session on Tuesday, December 13, 1977, 9 a.m., in the Ernest O. Thompson Building, 10th and Colorado, Austin. Applications for exempt commodity authority were considered for Jasper D. Spraberry, Hollis M. Bosse, and Chip I. McBay.

Additional information may be obtained from Denna Braun, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 475-2088.

Filed December 12, 1977 4:21 p.m.

Doc. No. 776957



## Technical Steering Group, State Occupational Information Coordinating Committee

### Emergency Meeting

The Technical Steering Group of the State Occupational Information Coordinating Committee met on Wednesday, December 14, 1977, 8:30 a.m. in the 7th floor conference room, Executive Office Building, 411 West 13th Street, Austin. The purpose of the meeting was to elect a chairman, establish a schedule for hiring staff, prepare application for federal funds, and determine resource representatives for group activities.

Additional information may be obtained from Janet Barkley Booher, Executive Office Building, 411 East 13th Street, Austin, Texas 78701, telephone (512) 475-6173.

Filed December 13, 1977, 9:33 a.m.  
Doc. No. 776974

## Texas State University System

### Meeting

The Board of Regents of the Texas State University System will meet on Thursday, December 22, 1977, 11 a.m. in Room 505, Sam Houston Building, Austin, to review bids concerning the advance refunding of certain combined fee revenue bonds for Southwest Texas State University.

Additional information may be obtained from Gary L. Whittle, Room 505, Sam Houston Building, Austin, Texas 78701, telephone (512) 475-3876.

Filed December 15, 1977, 10:38 a.m.  
Doc. No. 777158

## Texas Tourist Development Agency

### Meeting

The board of the Texas Tourist Development Agency will meet on Friday, January 20, 1978, 9:30 a.m. in Room 1033, Stephen F. Austin Building, Austin.

The board will appoint board committees, review fiscal year 1977 and 1978 budgets, review spring 1978 media plans and fiscal year 1978 travel missions, and select sites and dates for 13th annual conference on tourist development.

Additional information may be obtained from Margaret Younger, P.O. Box 12008, Austin, Texas 78711, telephone (512) 475-4326.

Filed December 15, 1977, 10:16 a.m.  
Doc. No. 777159

## Texas Water Development Board

### Hearing

The General Counsel of the Texas Water Development Board will conduct a hearing on Thursday, January 5, 1978, 9 a.m. in Conference Room 100B, John H. Reagan Building, 15th and Congress, Austin. The board will consider proposed rule 156.0250.004, concerning sales of water from reservoirs. The complete hearing notice is posted in the East Wing of the State Capitol.

Additional information may be obtained from Bruce Bigelow, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-7836.

Filed December 13, 1977, 3:32 p.m.  
Doc. No. 776955

## Regional Agencies

### Meetings Filed December 12, 1977

*The Amarillo MHMR Regional Center*, Board of Trustees, met at the Psychiatric Pavilion, 7201 Evans Street, Amarillo, on December 16, 1977, at 8:30 a.m. Further information may be obtained from Clark E. Wooldridge, P.O. Box 3259, Amarillo, Texas 79106, telephone (806) 353-7235.

*The Austin/Travis County MHMR*, Personnel Committee and Budget Finance Committee, met at 1430 Collier, Austin, on December 16, 1977, at noon. The Budget and Finance Committees met at 12:30 p.m. Further information may be obtained from Dan Love, 1430 Collier Street, Austin, Texas 78704, telephone (512) 447-4141.

**The Brazos River Authority**, Administrative Policy Committee, met at 4400 Cobbs Drive, Waco, on December 16, 1977, at 10 a.m. Further information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76710, telephone (817) 776-1441.

**The Central Texas MHMR Center**, Board of Trustees, met in the board room, 308 Lakeway Drive, Brownwood, on December 16, 1977, at 5:30 p.m. Further information may be obtained from James H. Dudley, P.O. Box 250, Brownwood, Texas 76801, telephone (915) 646-9574.

**The Copano Bay Soil Conservation District No. 329** met in the Council Room, Refugio City Hall, Refugio, on December 19, 1977, at 7 p.m. Further information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, telephone (512) 526-2334.

**The Deep East Texas Regional MHMR Services**, Board of Trustees, will meet in the Harvest Room, Lufkin Federal Savings and Loan, 211 Shepherd, Lufkin, on December 20, 1977, at 5 p.m. Further information may be obtained from Wayne Lawrence, 303 Angelina Building, Lufkin, Texas 75901, telephone (713) 639-1141.

**The Mental Health and Mental Retardation Regional Center of East Texas**, Board of Trustees, met on the 10th floor, Bryant Petroleum Building, 305 South Broadway, Tyler, on December 15, 1977, at 4 p.m. Further information may be obtained from Ray Thomson, 305 South Broadway, 10th floor, Bryant Petroleum Building, Tyler, Texas 75702, telephone (214) 797-1351.

**The Houston-Galveston Area Council**, Area-wide Planning Advisory Committee, will meet at 3701 West Alabama, Houston, on December 20, 1977, at 4 p.m. Further information may be obtained from Nick Aschman, P.O. Box 22777, Houston, Texas 77027, telephone (713) 627-3200.

**The Lower Neches Valley Authority**, Board of Directors, will meet in the conference room, LNVA Office Building, 7850 Eastex Freeway, Beaumont, on December 20, 1977, at 10 a.m. Further information may be obtained from J. D. Nixon, P.O. Drawer 3464, Beaumont, Texas 77704.

**The San Antonio River Authority**, Board of Directors, will meet in the conference room, 100 East Guenther, San Antonio, on December 21, 1977, at 2 p.m. The Board of Trustees of the Employees Retirement Trust will meet after the above-scheduled meeting. Further information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, Gilbeau Station, San Antonio, Texas 78204, telephone (512) 227-1373.

**The West Texas Council of Governments**, Board of Directors, met in Suite 700, Mills Building, 303 North Oregon, El Paso, on December 16, 1977, at 9 a.m. Further information may be obtained from Eleanor Bode, Mills Building, Suite 700, 303 North Oregon, El Paso, Texas 79901, telephone (915) 532-2910.

Doc No. 777458

### Meetings Filed December 13, 1977

**The Houston Metropolitan Transit Authority**, Board of Directors, met in the Mayor's Conference Room, City Hall, 900 Brazos, Houston, on December 16, 1977, at 2 p.m. Further information may be obtained from Jim Dougherty, P.O. Box 1562, Houston, Texas 77001, telephone (713) 222-5151.

Doc No. 777453

### Meetings Filed December 14, 1977

**The South Plains Health Systems, Inc.**, met at the Mahon Library, 1306 9th Street, Lubbock, on December 15, 1977, at 7 p.m. Further information may be obtained from Ronald D. Warner, 1217 Avenue K, Lubbock, Texas 79401, telephone (806) 747-0181.

Doc No. 777153

### Meetings Filed December 15, 1977

**The Coastal Bend Subarea Health Advisory Council**, Plan Development Committee, will meet at Gulfway National Bank, 6000 South Padre Island, Corpus Christi, on December 22, 1977, at 7:30 p.m. Further information may be obtained from Emily M. Petersen, Texas A&I University, Station I, Box 2378, Kingsville, Texas 78363, telephone (512) 595-5545.

**The North Texas Municipal Water District**, Board of Directors, will meet in the administrative offices, NTMWD Central Plant, Highway 78 East, Wylie, on December 22, 1977, at 4 p.m. Further information may be obtained from Carl W. Riehn, P.O. Drawer C, Wylie, Texas 75098, telephone (214) 442-2217, extension 26.

Doc No. 777161

## Comptroller of Public Accounts

### Administrative Decision 7475

#### *Summary of Decision:*

(1) Investment in a "foreign shipping companies" account, which represented petitioner's investment in ships bearing foreign flags and which was carried as an asset on petitioner's books, was properly includible in petitioner's surplus for franchise tax purposes.

(2) Account labeled "good will," which was a revaluation account representing an estimate of the excess value of good will arising from the value of patents and overall value of petitioner's business based on its market position, was a reflection of petitioner's fiscal condition and was includible for franchise tax purposes in petitioner's surplus.

For copies of recent opinions selected and summarized by the Legal Services Division, contact Harriet Burke, Legal Services Division, P.O. Box 13528, Austin, Texas 78711. Copies will be edited to comply with confidentiality statutes.

Issued in Austin, Texas, on December 14, 1977.

Doc No 777145     Harriet D. Burke  
                           Hearings Section  
                           Comptroller of Public Accounts

Filed December 14, 1977 12:32 p.m.

For further information please call (512) 475-2148.

## Coordinating Board, Texas College and University System

### Notice of Intent to Employ Consultant

It is the intent of the Coordinating Board, Texas College and University System, to contract with a private consultant to conduct a comprehensive study of the formula system of funding for public senior colleges and universities.

Offers of consulting services are invited. Offers may be submitted through January 15 by writing to Kenneth H. Ashworth, Commissioner of Higher Education, Coordinating Board, Texas College and University System, P.O. Box 12788, Austin, Texas 78711.

The contract for this consulting service will be awarded on the basis of proven knowledge and abilities in the highest levels of college and university administration, finance, and programs, and a demonstrated back-

ground of familiarity and understanding of the design and evolution of the Texas formula system.

Issued in Austin, Texas, on December 9, 1977.

Doc No 776973     Kenneth H. Ashworth  
                           Commissioner of Higher  
                           Education

Filed December 13, 1977

For further information please call (512) 475-4361.

## Judiciary

### Texas Court of Criminal Appeals

Appearing below are the members of the Texas Court of Criminal Appeals. Effective January 1, 1978, two new members to the court include Jim Vollers and Wilbur C. Davis, also Commissioners Carl E. F. Dally and Tom G. Davis will become judges at that time. The members have offices in the State Supreme Court Building, Austin, Texas 78711. Each judge and commissioner is listed with his office telephone number, if available, and date of expiration of his term of office.

John F. Onion, Jr., Presiding Judge  
(512) 475-4467  
December 31, 1982

W. T. Phillips, Judge  
(512) 475-4121  
December 31, 1980

Leon Douglas, Judge  
(512) 475-3841  
December 31, 1980

Truman Roberts, Judge  
(512) 475-3053  
December 31, 1982

Wendell A. Odom, Judge  
(512) 475-2811  
December 31, 1978

Jim Vollers, Judge  
Until next general election

Wilbur C. Davis, Judge  
Until next general election

Carl E. F. Dally, Commissioner  
(512) 475-5939  
December 31, 1982

Tom G. Davis, Commissioner  
(512) 475-3935  
December 31, 1980

Doc No 21437

## Texas Department of Public Safety

### Request for Proposal

The Traffic Law Enforcement Division of the Texas Department of Public Safety plans to contract the services of a consulting firm to develop a comprehensive knowledge examination and related software to be used in testing applicants for a Texas drivers license in the department's automated drivers license testing machines.

This examination and software will be developed under the guidance and direction of the Inspection and Planning Division of the Texas Department of Public Safety.

#### (a) Definitions

(1) "DPS" means the Texas Department of Public Safety.

(2) "Examination" means all knowledge test necessary to determine driver competency.

(3) "Software" means 35mm slide photographic transparencies depicting a graphic illustration of a traffic situation and related questions.

(4) "Automated testing machines" means equipment used by the DPS to administer knowledge examinations to drivers license applicants by projecting 35mm photographic transparencies onto an individual viewing screen and providing an applicant answer response and recording system.

(5) "Offeror" means any person or firm responding to this solicitation.

(6) "Applicant" means any person applying for a Texas license to operate a motor vehicle.

(b) The following conditions are applicable in responding to this request for proposal:

(1) Date due. Proposals are due at the address given below by 5 p.m. January 23, 1978. It is the responsibility of the offeror to have the proposal in the DPS office at that time. Proposals received late for any reason will not be considered.

(2) Proposal address. Questions about the solicitation and proposals in response to it should be submitted to the Inspection and Planning Division of the Texas Department of Public Safety, 5805 North Lamar Boulevard Box 4087, Austin, Texas 78773, telephone (512) 452-0331, extension 224.

(3) Type of contract. A fixed price contract will be awarded to the successful offeror.

(4) Contract period. An eight month contract is envisioned. It is anticipated the research and development will commence immediately upon awarding of the contract and should be completed before September 30, 1978.

(5) Number of copies. The offeror must furnish a minimum of four copies.

(6) Proposal structure. All proposals must conform to the structure and content presented in the proposal structure of this notice.

(c) Guidelines. The following guidelines should control the consultant's performance of the project and be used as the basis for a proposal:

(1) The offeror must be able to supply, before any contract is negotiated, at least 35mm mounted photographic transparencies depicting motor vehicle traffic situations for review and selection by the DPS as to suitability and photographic quality. The offeror must include with any proposal 25 samples of such transparencies.

(2) The offeror must develop test questions for each selected photographic transparency and submit each to the DPS for review and approval prior to any item analysis.

(3) The offeror must perform a psychometric appropriateness analysis on each test item for level of difficulty, reliability, and validity and submit the results to the DPS for approval.

(4) The offeror must develop a minimum of 210 different test items with graphic illustrations. These items shall cover automobile, truck, bus, and motorcycle operations broken down as follows: (A) automobile operation, 90 separate items; (B) bus and truck operation, 60 separate items; and (C) motorcycle operation, 60 separate items.

(5) The offeror must deliver before the end of contract period, 300 of each of the 210 selected and approved photographic transparencies, with test questions in a format compatible with the DPS test machines, for a total of 63,000 35mm test slides. Each 35mm slide shall be in a plastic mount and coded to operate in DPS test machines.

(6) The offeror must develop a battery of tests using the same items and graphics for a paper pencil test.

(7) The offeror must determine in the research phase if the test items sufficiently cover each field to determine applicants' qualifications.

(d) Proposal structure. The proposal must provide the following items:

(1) The company. Identify the company and the individual who may be contacted regarding the proposal and a possible ensuing contract. This individual should be authorized to negotiate for and to bind the offeror to a contract.

(2) Prospectus. A prospectus of the research firm's history, experience in test development, experience specifically in drivers license test development, if any, and expertise and background of the principal investigator must be furnished with the proposal.

(3) **Scope**—State the objectives of the project as understood by your company. Elaborate on the scope, methodology, and products of the proposed project.

(4) **Technical presentation**—Present a detailed explanation of the proposed approach and work steps, including a project schedule.

(5) **Rates and terms**—Present terms and conditions required by the offeror and warranty of your product.

(6) **Cost** quoted for project must be firm through March, 1978.

(e) **Evaluation of proposals**—The DPS will evaluate, and reserves the right to reject, all proposals. Selection will be based upon the following criteria:

(1) Ability of the offeror to provide 25 sample photographic transparencies as set out in the guidelines. The DPS will evaluate each transparency for its suitability as to content, effectiveness, and quality.

(2) The demonstrated capability, expertise, and experience in test development and analysis.

(3) Experience in developing test for driver licensing.

(4) Experience in developing software for automated testing machine.

(5) Study approach.

(6) Resources available.

(7) Cost.

(8) Product warranty.

Issued in Austin, Texas, on December 9, 1977.

Doc No. 776938      Wilson E. Speir  
Director  
Texas Department of Public  
Safety

Filed December 12, 1977, 10 a.m.

For further information, please call (512) 452-0331, Ext. 224.

## Texas Register

### Corrections of Error

*Texas Energy Advisory Council* has no authority for fuel allocation and the rules governing that subject should not have been published under that agency's head in the *Directory of Agency Rules*.

The adopted rules of the *Texas Department of Health* concerning nursing and convalescent homes, published in the December 9, 1977, issue of the *Register* (2 TexReg 4719) contained three errors as published:

(1) The first sentence of the third paragraph of the preamble should read: "Comments included that the opinions, observations, and conclusions of the citizen advocate be advanced, if appropriate, through the inspection report and not independently or publicly; that several associations for citizen advocates be contacted for invitation; and that citizen advocates be appropriately trained."

(2) The last sentence of Rule 007(b)(5) should read: "A facility may exceed its licensed capacity under these circumstances, monitored by the Department of Health staff, until suitable arrangements can be made."

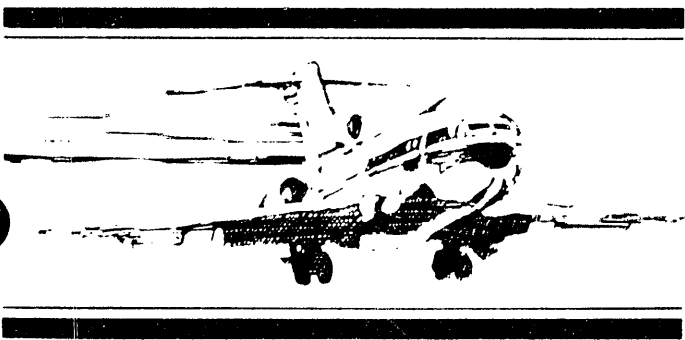
(3) The first sentence of Rule 008(h) should read: "The reports, records, and working papers used or developed in an investigation under Section 16 are confidential, however, by this rule, copies of investigation reports of verified cases of abuse or neglect under Section 16, or those cases not verified as unsubstantiated, will be furnished to the following: the appropriate court, district attorney, and law enforcement agency, other agencies or individuals which the department considers appropriate to the investigative purposes of protecting the resident, and the institution, with proper identification."

The date shown at the end of the *Texas Water Commission* proposed rules published in the December 13, 1977, issue of the *Register* (2 TexReg 4779) was incorrect. That date should read "Proposed Date of Adoption: January 13, 1978."

## Texas Water Commission

### Supplemental Hearing Notice

A notice of hearing by the Texas Water Commission was incomplete as published in the December 2, 1977,



issue of the *Texas Register* (2 TexReg 4658). The complete summary of the notice (which included six hearings on January 13, 1978) should have read as follows:

The commission will hold the following adjudicative hearings on: the application of Jane Harkins, Patricia Cookston, Finham Corporation, and Tom Currie, seeking approval of preliminary plans for channel improvements and landfill on Bear Creek, a tributary of the West Fork of the Trinity River in Dallas and Tarrant Counties; the application of Continental Oil Company, seeking approval of preliminary plans for channel rectification on an unnamed creek, tributary of Woody Creek in Lake Oak County; the application of Houston Lighting and Power Company, seeking approval of preliminary plans for construction of a levee in the 100-year flood plain of the Brazos River in Fort Bend County for the purpose of providing protection to 850 acres of

land to be used as an ash disposal facility; the application of Woodlands Development Corporation, seeking approval of preliminary plans for channel improvements on an unnamed drainage depression tributary of Panther Branch in Montgomery County; the application of J. H. Deutscher and S. C. Weil, Jr., seeking approval of preliminary plans for levee construction and channel modifications on Middle and Mill Bayous, tributaries of the Brazos River in Brazoria County; and the application of the City of Houston, seeking approval of preliminary plans for rectifying 3,760 feet of the north bank of Buffalo Bayou in the City of Houston, 3.4 miles east of the Harris County Courthouse, for the purpose of protecting the City of Houston Wastewater Treatment and Sludge Disposal Plant.

Doc. No. 21A38