

Texas Register

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

Governor—appointments, executive orders, and proclamations

Attorney General—summaries of requests for opinions, opinions, and open records decisions

Emergency Sections—sections adopted by state agencies on an emergency basis

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

Adopted Sections—sections adopted following a 30-day public comment period

Open Meetings—notices of open meetings

In Addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes accumulative quarterly and annual indexes to aid in researching material published.

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3."

How To Research: The public is invited to research rules and information; of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, sections number, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

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

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code*;

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



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TAC Titles Affected—August

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Part II. Texas Turnpike Authority

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Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies maybe held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record.

Requests for Opinions

(RQ-1783). Request from R.C. "Dick" Lindsey, Deputy Director/Chief Investigator, Texas Funeral Service Commission, Austin, concerning authority to draw blood from a corpse.

(RQ-1784). Request from H. Tati Santiesteban, Chairman, Natural Resources Committee, Texas State Senate, Austin, concerning procedure for disincorporation of a municipality.

(RQ-1785). Request from Doyle Willis, Chairman, General Investigating, Texas House of Representatives, Austin, concerning representation of inmates before the Board of Pardons and Paroles.

(RQ-1786). Request from William D. Taylor, Interim Executive Director, Department of Commerce, Austin, concerning whether interest earned on monies in the Texas Exporters Loan Fund may be used to administer the Texas Exporters Loan Program.

(RQ-1787). Request from Mark W. Stiles, Chairman, County Affairs, Texas House of Representatives, Austin, concerning whether an ordinance of the City of Austin concerning volume discount rates for sanitary landfill customers violates the Texas anti-trust laws.

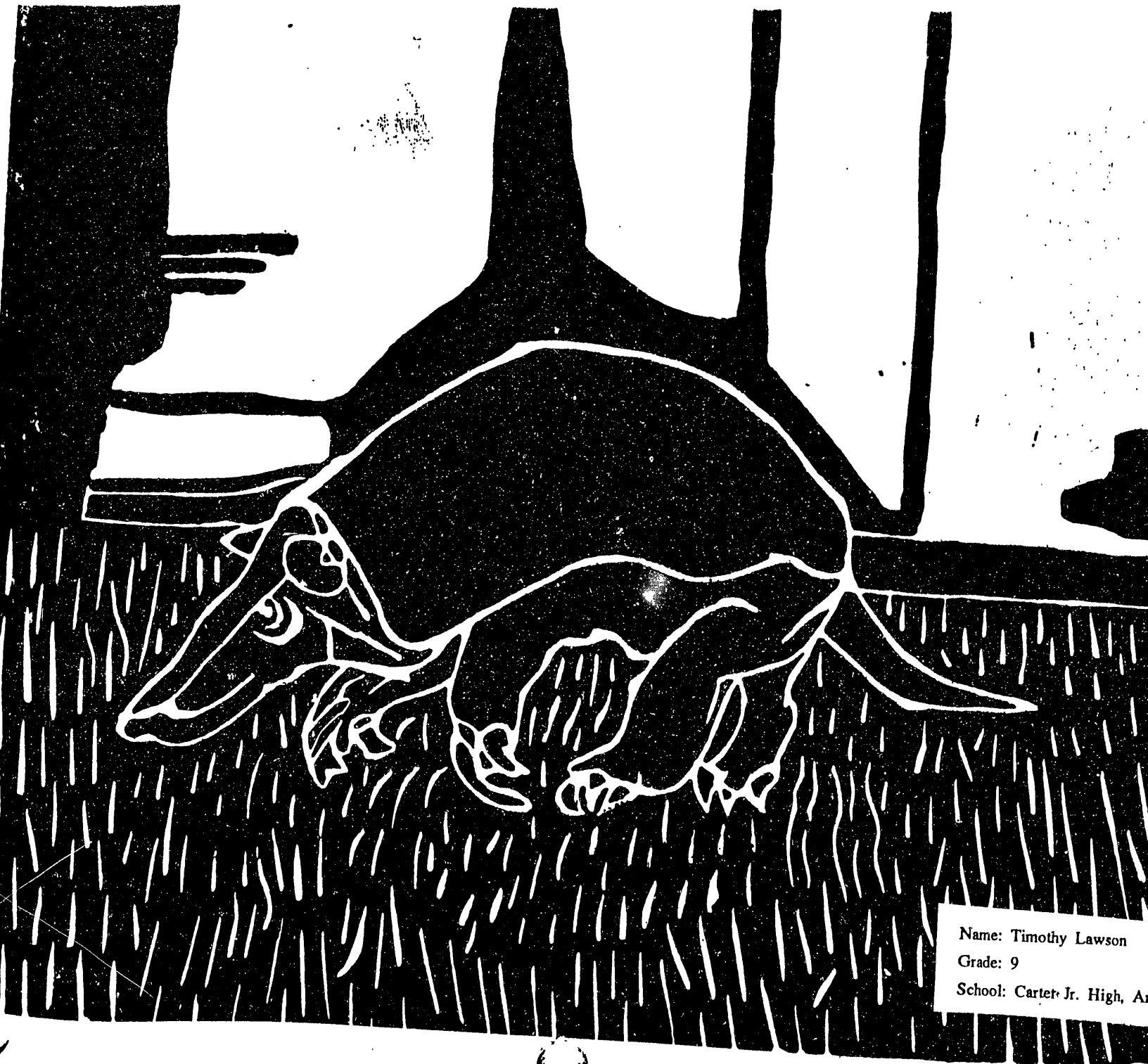
(RQ-1788). Request from Ray Farabee, General Counsel, The University of Texas System, Austin, concerning authority of a state agency to remove asbestos from a public building.

(RQ-1789). Request from Vernon M. Arrell, Commissioner, Texas Rehabilitation Commission, Austin, concerning what constitutes a quorum of the Texas council on Disabilities, and related questions.

(RQ-1790). Request from Ed C. Jones, Angelina County Attorney, Lufkin, concerning compensation of the county-court-at-law judge of Angelina County for service on the county juvenile board.

TRD-897580





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School: Carter Jr. High, Ar

Emergency Sections

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

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

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 521. Fee Schedule

• 22 TAC §521.5

The Texas State Board of Public Accountancy (TAPC) adopts on an emergency basis an amendment to §521.5, concerning temporary permit fee. The amendment is adopted on an emergency basis in order to implement the provision of the Public Accountancy Act of 1979, as amended by the 71st Legislature, 1989.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to temporary permit fee.

§521.5. Temporary Permit Fee. The fee for the issuance of a temporary permit to practice public accountancy in this state incident to the regular practice outside of this state shall be **\$100** [\$10].

Issued in Austin, Texas, on August 21, 1989.

TRD-8907623 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: August 21, 1989

Expiration date: December 19, 1989

For further information, please call: (512) 450-7066

• 22 TAC §521.8

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §521.8, concerning retired or disabled status. The amendment is adopted on an emergency basis in order to implement the Public Accountancy Act of 1979, §9(e), as amended by the 71st Legislature, 1989.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to fees for retired and disabled licensees.

§521.8. Retired or Disabled Status. The license fee, including the annual fee and

any temporary fees established by statute, for an individual in retired or disabled status shall be \$10.

Issued in Austin, Texas, on August 21, 1989

TRD-8907622 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: August 21, 1989

Expiration date: December 19, 1989

For further information, please call: (512) 450-7066

• 22 TAC §521.9

The Texas State Board of Public Accountancy adopts on an emergency basis §521.9, concerning certification fee. The new section is adopted on an emergency basis in order to implement the Public Accountancy Act of 1979, §12(m), as amended by the 71st Legislature, 1989.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to certification fee

§521.9. Certification Fee. The fee for the initial issuance of a CPA certificate pursuant to the Act shall be \$20.

Issued in Austin, Texas on August 21, 1989.

TRD-8907621 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: August 21, 1989

Expiration date: December 19, 1989

For further information, please call: (512) 450-7066

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 355. Research and Planning Fund

Water Research

• 31 TAC §355.61

The Texas Water Development Board (board) adopts on an emergency basis new

§355.61, concerning the adoption by reference of a memorandum of understanding (MOU) between the board and the Texas State Soil and Water Conservation Board. The memorandum is being adopted to allow the board to make a grant to the Soil and Water Conservation Board from the board's research and planning fund. The Soil and Water Conservation Board would use the grant to study the physical conditions of the watersheds of the state that affect surface and underground water quality and quantity, to determine corrective measures, and to report recommendations to the 72nd Texas Legislature, as specified in appropriations riders for the board and the Soil and Water Conservation Board. The new section is being adopted on an emergency basis to allow the earliest possible implementation of the study, which will address water quality concerns that could affect the public health, safety, and welfare.

The new section is adopted on an emergency basis under the Texas Water Code, §6.104, which allows the board to enter into memoranda of understanding with other state agencies, and requires the board to adopt such memoranda by rule, and pursuant to the Texas Water Code, §6.101, which gives the board the authority to adopt rules necessary to carry out its powers and duties.

§355.61. Adoption of Memorandum of Understanding by Reference. A memorandum of understanding between the board and the Texas State Soil and Water Conservation Board, required to be adopted by rule as set forth in the Texas Water Code, §6.104, is adopted by reference. Copies of this memorandum are available upon request from the Texas Water Development Board, General Counsel, P.O. Box 13231, Austin, Texas 78711-2321, (512) 463-7981. This memorandum of understanding concerns a grant to the Texas State Soil and Water Conservation Board by the Texas Water Development Board from the research and planning fund of the water assistance fund.

Issued in Austin, Texas on August 17, 1989.

TRD-8907553 Suzanne Schwartz
General Counsel
Texas Water Development
Board

Effective date: August 18, 1989

Expiration date: December 16, 1989

For further information, please call: (512) 463-7981

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 91. Discipline and Control

Control

• 37 TAC §91.51

The Texas Youth Commission adopts on an emergency basis the amendment to §91.51, concerning facility security. Emergency adoption is justified to eliminate the rule prohibiting the use of mace. The amendment will allow for the emergency adoption of new §91.61 adopted simultaneously. Section 91.61 provides for commission use of approved chemical agents in limited circumstances to ensure the safety of staff and of youth in custody of the commission.

The amendment is adopted on an emergency basis under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.51. Facility Security.

(a) (No change.)

(b) Rules.

(1) (No change.)

[(2) Use of mace is prohibited.]

(2)[(3)] Tear gas may be used only to the extent reasonably necessary to bring under control a riot that threatens imminent harm to life or imminent and substantial destruction of property and only at the direction of the superintendent or designee. Use of tear gas is reported immediately to the executive director.

(3)[(4)] Under no circumstances is a stimulant, tranquilizer, or psychotropic drug administered for the purpose of program management and control, or for experimentation and research.

(4)[(5)] Each facility maintains control center staffed 24 hours a day.

(5)[(6)] Each facility maintains a ey control system.

(6)[(7)] Facilities have access to ie necessary equipment to maintain essential light and as system of communication ithin the facility and between the facility id the community for use in an emergen-

(7)[(8)] All facilities have writ- 1 emergency plans including fire, riot, stage, medical, evacuation, and natural asters. Plans are made available to all -sonnel and are reviewed and updated ually.

(8)[(9)] All facilities personnel trained in the implementation of the rgency plans.

(9)[(10)] All facilities ensure and maintain procedures for:

(A) securing a dorm and/or facility for day and night activity;

(B) responding to escapes and attempted escapes;

(C) youth using tools, culinary, and medical equipment; and

(D) registering visitors and conducting a search of a visitor in accordance with General Operating Policy (GOP), §61.01 §89.1 of this title relating to Basic Youth Rights).

(10)[(11)] Institutions ensure and maintain procedures for:

(A) institutional campus security, as appropriate;

(B) operation of security gate, if appropriate;

(C) youth movement in an institution; and

(D) supervising youth outside the facility perimeter.

Issued in Austin, Texas on August 16, 1989.

TRD-8907513

Ron Jackson
Executive Director
Texas Youth Commission

Effective date: August 17, 1989

Expiration date: December 15, 1989

For further information, please call: (512) 483-5244

• 37 TAC §91.61

The Texas Youth Commission (TYC) adopts on an emergency basis new §91.61, concerning use of chemical agents. The increasing severity and number of assaults in some TYC facilities present an imminent peril to the safety and welfare of youth and staff there, necessitating the adoption of this emergency section. The new section authorizes the use of chemical agents to regain control of a seriously assaultive youth without causing harm to the youth or others. Use of a chemical agent will be limited to incidents when use of force would be justified but when the use of force, under the circumstances, would likely result in major physical injury to the youth or others.

The new section is adopted on an emergency basis under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.61. Use of Chemical Agents.

(a) Policy. The Texas Youth Commission (TYC) staff use agency approved chemical agents when necessary to ensure the safety and welfare of youth and staff. The Texas Youth Commission prohibits the use of chemical agents as a form of punishment.

(b) Rules.

(1) Criteria for use.

(A) Use of approved chemical agents is justified only in situations when the use of force would be justified but when the use of force, under the circumstances, would likely result in major physical injury to the youth or others.

(B) Use of chemical agents is authorized only in TYC facilities approved by the executive director.

(2) Staff use.

(A) Only TYC staff who have received appropriate training are authorized to use chemical agents.

(B) A chemical agent may only be used at the direction of the facility administrator or designee. In all instances, the superintendent, assistant superintendent, director of security, or administrative duty officer will be notified prior to its use.

(C) Immediately following the incident, the medical staff examines and, if necessary, treats youth exposed to the agent.

(D) In all cases, the use of a chemical agent will be witnessed by TYC staff members other than the staff using the agent.

(E) All incidents involving the use of chemical agents are reported on the incident Report Form CCF-225, which must be completed immediately after the incident by the employee using the chemical agent. All such incidents are reported to the facility administrator no later than the next working day.

(F) The facility administrator is responsible for reporting the use of a chemical agent to the director of institutions, deputy executive director, and executive director within 24 hours of receipt of notification.

Issued in Austin, Texas on August 16, 1989.

TRD-8907512

Ron Jackson
Executive Director
Texas Youth Commission

Effective date: August 17, 1989

Expiration date: December 15, 1989

For further information, please call: (512) 483-5244

Part X. Texas Adult Probation Commission

Chapter 321. Standards

• 37 TAC §321.12

The Texas Adult Probation Commission (TAPC) adopts on an emergency basis an amendment to §321.12, concerning restitution centers. The section is adopted on an emergency basis in order for departments to be in compliance with TAPC standards.

The section was approved by the commission at its July 28, 1989 meeting. A copy of the standard will be provided to vendors of services. Agency staff will review department and vendor records to insure compliance.

The amendment is adopted on an emergency basis under the Texas Code of Criminal Procedure, Article 42.121, §3.01, which provides the Texas Adult Probation Commission with the authority to promulgate reasonable rules.

§321.12. Restitution Center [Community Rehabilitation Center].

(a) Sentencing alternative. The judicial district court shall use the restitution [rehabilitation] center as a sentencing alternative to incarceration in the Texas Department of Corrections (TDC), not as a sentencing alternative to regular probation or intensive supervision probation (ISP). In utilizing this sentencing alternative, the district court should give priority to restitution [rehabilitation] center placements to offenders on whom there has been a motion to revoke probation, and to offenders whose pre-sentence investigation reports have indicated the need for incarceration at TDC were the restitution [rehabilitation] center alternative not available.

(b) Reaching capacity. The judicial district court and Adult Probation Department shall ensure that a sufficient number of eligible offenders are placed in the restitution [rehabilitation] center so that it will reach at least 50% of its capacity within three months and 90% capacity within months after commencing operation.

(c) Eligibility for placement. To be eligible for placement in a restitution [rehabilitation] center the offender:

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

(5) would have been incarcerated at TDC if it were not for the availability of the restitution [rehabilitation] center.

(d) Court order. The probation department shall place an offender in a restitution [rehabilitation] center only after an order by the court and release a probationer from a restitution [rehabilitation] center

only by order of the court.

(e) Pre-sentence investigation. If a district court does not order a pre-sentence investigation, the probation department shall have a post-sentence investigation report written for each offender placed in a restitution [rehabilitation] center. This report shall be in compliance with the Texas Adult Probation Commission (TAPC) pre-sentence investigation report standards.

(f) Term of residency. The probationary sentence ordered by the court to be served in a restitution [rehabilitation] center shall be for a period of not less than three months nor more than 12 months.

(g) Community advisory council. A community advisory council of not less than seven persons representative of the community shall be appointed by the district judge or judges to advise the probation department in its establishment and maintenance of the restitution [rehabilitation] center. The community advisory council shall meet at least once in each calendar quarter.

(h) Appointment of the director. The chief adult probation officer shall appoint a director of the restitution [rehabilitation] center who is familiar with the operation of a residential program, the goals and procedures of an adult probation department, and the diversionary purpose of the restitution [rehabilitation] center.

(i) Maximum resident capacity. The probation department shall establish the maximum resident capacity limit of the restitution [rehabilitation] center prior to commencing operations at the center. The limit shall not be exceeded under any circumstances.

(j) Denying admission. The judicial district court and the adult probation department shall give the restitution [rehabilitation] center director the authority to deny admission of a prospective resident if that offender is not eligible for placement in a restitution [rehabilitation] center or if the restitution [rehabilitation] center has reached its capacity.

(k) Prohibited uses. The judicial district court and the Probation department shall not use the restitution [rehabilitation] center as a diagnostic facility to determine offender eligibility for restitution [rehabilitation] center services or as an emergency shelter for probationers experiencing crisis situations or to alleviate overcrowding at the county jail.

(l) Fiscal management. The probation department shall maintain a separate account within the judicial district fund for restitution [rehabilitation] center funds and use a restitution [rehabilitation] center fiscal management system approved by TAPC.

(m) Data. The probation department shall submit on a timely basis the

restitution [rehabilitation] center data requested by TAPC.

(n) Employment opportunities and placement. The probation department shall ensure that the restitution [rehabilitation] center director assists residents in obtaining and maintaining employment. To this end, programs should [shall] be available to enhance the employability of the residents.

(o) Reports to TDC. If the probation of a resident at the restitution [rehabilitation] center is revoked, the probation department shall forward to TDC with the commitment papers a copy of the written evaluation report, the PSI, and other information as required by TAPC standards.

(p) Training. The probation department shall require that [the] departmentally operated restitution [rehabilitation] center personnel participate in residential services training offered by TAPC. Probation departments contracting with private contractors for restitution center services shall ensure that services offered by the private contractors include a case management system equivalent to the system presented in the residential training modules offered by TAPC staff.

(q) Equipment transfer. The probation department shall transfer the equipment and any remaining supplies purchased with restitution [rehabilitation] center funds to another restitution [rehabilitation] center or to an adult probation department temporarily or permanently upon request of the TAPC.

(r) Fiscal guidelines. The probation department shall follow TAPC fiscal guidelines for restitution [rehabilitation] centers including, but not limited to:

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

(s) Autonomy. The probation department shall ensure that the restitution [rehabilitation] center is autonomous and separate from other correctional or treatment facilities.

(t) Case classification. The probation department shall, the restitution [rehabilitation] center to utilize the TAPC case classification system and the TAPC case management system as part of the intake, assessment, reassessment, and termination processes.

(u) Policies and procedures. The probation department shall operate the community restitution [rehabilitation] center in accordance with policies and procedures developed by the chief adult probation officer and approved by the executive director of TAPC. The policies and procedures are to include, but not be limited to:

(1)-(7) (No change.)

(8) providing for release procedures and intensive supervision upon release from the restitution [rehabilitation] center;

(9)-(16) (No change.)

(v) Location. The probation department shall ensure that the location of the restitution [rehabilitation] center is suited to the employment needs of the residents, and other factors considered important by the local courts and probation departments. Before selecting the location to be used as the basis for an application for establishing a restitution [rehabilitation] center to be operated by the probation department, the department shall publish a notice in three consecutive issues of a newspaper of general circulation in the county of the proposed location. The notice shall describe the proposed location or locations in a manner sufficient to enable a reasonable person to locate the premises and identify it from other places in the community, and shall also state the time, date, and place of a public hearing on the proposed restitution [rehabilitation] center. The hearing shall be held not less than 10 nor more than 30

days after the date the last notice is published. No center established after September 1, 1987, may be located within 1,000 feet of a public or private school.

(w) Regional restitution [rehabilitation] center. Probation departments choosing to cooperate in establishing a restitution [rehabilitation] center shall follow the TAPC guidelines for regional restitution [rehabilitation] centers.

(x) Caseload average.

(1) The following shall not be included in calculating the department average caseload or in claiming per capita state aid:

(A) residents of a restitution [rehabilitation] center;

(B) probationers who have been terminated from a restitution [rehabilitation] center and are being intensively supervised within the judicial district in which the restitution [rehabilitation] center is located.

(2) Probationers who have been terminated from a restitution [rehabilitation] center and are being intensively supervised in a judicial district other than the restitution [rehabilitation] center, may be included in calculating the department average caseload and in claiming per capita state-aid.

Issued in Austin, Texas on August 17, 1989.

TRD-8907549

Virginia Grote
Administrative Secretary
Texas Adult Probation
Commission

Effective date: August 18, 1989

Expiration date: December 16, 1989

For further information, please call: (512) 834-8188

Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

Symbology In proposed amendments. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 162. Texas Exporters Loan Fund

• 10 TAC §§162.1-162.8

The Texas Department of Commerce (department) proposes new §§162.1-162.8, concerning the administration and implementation of the Texas Exporters Loan Fund. These new sections cover requirements and procedures for submission of applications for a loan guarantee and supporting documentation and the consideration of those applications by the department. The new sections provide clarification of the information required to obtain a loan guarantee and to provide certain approval standards pursuant to the Government Code, Chapter 481.

Gary King, director of finance, has determined that there will not be fiscal implications as a result of enforcing or administering the new sections.

Mr. King also has determined that for each year of the first five year-period these sections as proposed are in effect the public benefit anticipated as a result of enforcing these sections as proposed is the accessibility of a loan guarantee for a qualified export transaction. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Bruce Anderson, General Counsel, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711 within 30 days after the date of this publication.

The new sections are proposed under Texas Civil Statutes, Article 4413(301), which provide the Texas Department of Commerce with the authority to adopt necessary rules.

§162.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Department of Commerce Act, Texas Government Code, Chapter 481, and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, the Texas Department of Commerce prescribes the following sections regarding practice and procedure before the department in the administration and implementation of the Texas Exporters Loan Fund Program.

(b) Purpose. The purpose of these sections is to provide standards of eligibility and application procedures for participation in the program.

(c) Objectives. The major objectives of the Texas Exporters Loan Fund Program are to expand employment and income opportunities for Texans through increased exports of Texas manufactured goods, services, and agricultural commodities by providing actual and potential exporters, particularly small and medium-sized exporters, and agricultural enterprises, with information and technical assistance on export opportunities and exporting techniques and financial assistance in support of export transactions.

(d) Definition of Terms. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Act—The Texas Department of Commerce Act, Texas Government Code, Chapter 481.

(2) Application—A completed application, including all documents and information required by the department and submitted by the exporter or private lender for a project.

(3) Allied lenders—Financial institutions receiving approval from the department to participate in the department's export finance programs.

(4) Board—The board of directors of the department.

(5) Business day—A day on which the department is open for business. The term shall not include any Saturday, Sunday or traditional holiday officially observed by the state. The department's normal business hours are 8 a. m. to 5 p.m. each business day.

(6) Department—Texas Department of Commerce.

(7) Equity—The exporter's contribution to a project in the form of cash, land, or depreciable property.

(8) Executive director—The executive director of the department.

(9) Eximbank—The Export Import Bank of the United States, which is the independent United States Government

agency that helps to finance and facilitate the export of United States goods and services.

(10) Export business—person engaged in the export of a Texas product or service.

(11) FCLIA—Foreign Credit Insurance Association, which is Eximbank's agent responsible for insuring export transactions.

(12) Fund—Texas export loan guarantee fund.

(13) Guarantee amount—With respect to loans made by financial institutions, is a sum measured in terms of United States dollars, that in the case of default by the borrower, guarantees repayment of the loan, not to exceed 85% of the loan. The guarantee amount may not exceed \$350,000, except in those instances where the department determines that substantial job creation is a major component of the project.

(14) Lender—A lending institution, including a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, life insurance company, governmental agency that customarily provides financing, or an affiliate of any of those entities. The term also applies to allied lenders.

(15) Loan review committee—A committee appointed by the board to provide advisory services on the financing of export loans guaranteed by the fund.

(16) Program—Texas Exporters Loan Fund Program.

(17) Project—The activities of an export business engaged in entering or expanding into export markets, found by the department to be required or suitable for the promotion of and for use by an export business.

(18) SBA—United States Small Business Administration.

(19) Staff—The staff of the department.

(20) State—State of Texas.

(21) Texas product—A manufactured good or service at least 25% of the total value of which is represented by Texas source components, labor, or intellectual

property or the export or pre-export preparation of a Texas agricultural product or livestock.

(e) Conflicts of interest.

(1) A member of the board, committee, agent, or employee of the department, in his or her own name or in the name of a nominee, may not hold an ownership interest of more than 7-1/2% or in excess of \$50,000 of the fair market value of an association, trust, corporation, partnership, or other entity that is, in its own name or in the name of a nominee, a party to a contract or agreement under this chapter on which the member of the board, committee, agent, or employee may be called on to act or vote.

(2) With respect to a direct or indirect interest, other than an interest prohibited by paragraph (1) of this subsection; a contract or agreement under this chapter on which the member of the board, committee, agent, or employee may be called on to act or vote, the member of the board, committee, agent, or employee shall disclose the interest to the department before the taking of final action by the department concerning the contract or agreement, and shall disclose the nature and extent of the interest and his or her acquisition of it. This disclosure shall be publicly acknowledged by the department and kept a part of the loan file. A member of the board, committee, agent, or employee who holds such interest may not be officially involved in regard to the contract or agreement, may not vote on a matter relating to the contract or agreement, and may not communicate with other members, agents, or employees concerning the contract or agreement. Notwithstanding any other provision of law, a contract or agreement entered into in conformity with this subsection is not void or invalid because of an interest described by this subsection, nor is a person who complies with this subsection guilty of an offense, and the person may not be removed from office or be subjected to other penalty because of this interest.

(3) A contract or agreement made in violation of this section is null and void and does not create an action against the department.

(f) Statements and opinions. Statements and opinions expressed orally or in writing by the staff in response to inquiry or otherwise, and not specifically identified and promulgated as rules, shall not be considered regulatory standards of the department.

(g) Examination of records. Any party requesting the examination of records pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, the appropriate fee must accompany the request.

(h) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Finance Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711.

§162.2. Texas Exporters Loan Fund.

(a) Authority. The fund, established in the State Treasury, consists of appropriations or transfers made to the fund, guarantee fees, other money received from operation of the program, and interest paid on money in the fund.

(b) Purpose. The department may use money in the fund to guarantee loans with a term of one year or less made by lenders to Texas businesses to finance activities of those businesses entering or expanding into export markets, including activities related to the purchase of inventory, equipment, and raw materials, manufacture, and marketing. In making guarantees from the fund, the department shall give preference to Texas products having the highest percentage of their total value represented by Texas source components, labor, or intellectual property.

(c) Confidentiality. Information collected by the department concerning the identity, background, finance, marketing plans, trade secrets, or other commercially sensitive information of a lender or export business is confidential, unless the lender or the export business consents to disclosure of the information.

§162.3. Eligibility Requirements.

(a) Applicants. An export business, located in Texas is eligible to submit an application to the department if the proposed export business meets the following criteria:

(1) must be entering or expanding into export markets;

(2) has a reasonable equity interest in the business, which shall be determined on a case-by-case basis by the department and the lender, however, the applicant must provide at least 10% of the total cost of the project;

(3) the project must involve an export transaction; and

(4) meet approval standards as set forth in §162.7 of this title (relating to Criteria for Approval of Loan Guarantee).

(b) Projects. In order for a project to be eligible for financing under the program, the project must meet the following requirements:

(1) be a Texas product, as defined in 162.1(d), of this title (relating to General Provisions);

(2) consist of eligible project costs; and

(3) be located in the state.

(c) Project costs. The proceeds of a loan guaranteed by the fund may be used to finance the following costs which are directly related to exporting:

(1) the purchase of inventory;

(2) the purchase and installation of machinery and equipment;

(3) the purchase of raw materials;

(4) operations costs relating to the manufacture of a Texas product; and

(5) operations costs relating to the marketing of a Texas product.

(d) Ineligible project costs. Costs which are not eligible include the refinancing of existing debt.

§162.4. Filing Requirements and Consideration of Applications.

(a) Application forms. An applicant or lender seeking a loan guarantee from the department must use the application forms provided by the department. Three copies of the completed application with all supporting documentation and required exhibits and attachments must be submitted to the department during a business day.

(b) Initial review by staff. The staff reviews the application for completeness and notifies the applicant of any additional information required. When all required information has been received, the staff determines if the project meets the approval standards set forth in §162.7 of this title (relating to Criteria for Approval of Loan Guarantee).

(c) Consideration of application. Following staff review, the loan review committee considers the application. The board finally considers the application, taking into account the purpose of the fund and the criteria and terms of the program.

(d) Approval of application. If the board approves the application, the executive director notifies the applicant in writing setting forth the terms and conditions of the financial assistance approved. The department, together with the lender and any other private or governmental participants, prepares the written agreements and documents necessary to close the loan or finalize the credit, in accordance with the terms and conditions set forth in the notice of approval. The board may, in its discretion, temporarily waive any requirement of any section in situations where, in its opinion, such requirement is not necessary for the protection of the public interest.

(e) Denial of application. If the application is disapproved, the department notifies the applicant in writing of the reasons for denial.

(f) Misrepresentation by applicant.

Each applicant has an affirmative and continuing duty to update and correct all information provided to the department and the lender. The department may reject any application, may revoke any notice of approval, or may refuse to close any loan in the event that any information provided by the applicant contains a material misrepresentation or omission or false information. In addition the department may:

(1) hold the applicant ineligible to apply for an export loan guarantee for a period of two years or until any issue of restitution is resolved, whichever is longer; and

(2) terminate the applicant's guarantee if the correct information would have changed the department's guarantee decision.

§162.5. Contents of Application.

(a) The application must set forth the information necessary for the determination of eligibility and must include, among other things:

- (1) a description and history of the exporter;
- (2) the experience of management;
- (3) financial statements;
- (4) income and expense projections for the export sale;
- (5) a description of collateral and other security;
- (6) purchase orders, if applicable, and proposed terms of the export sale;
- (7) foreign risk coverage when necessary and/or in the case of post export loan guarantees; and
- (8) a statement by the exporter or lender identifying other sources of financing which have been secured.

(b) The applicant must submit any other information as requested by the department in order to make a sound loan decision.

§162.6. General Terms and Conditions of Department's Financial Commitment.

(a) Permissible use of financial commitment. The department's financial commitment may be used to finance the costs and expenses related to the acquisition or production, financing, and shipment of a Texas product.

(b) Minimum loan or credit guaranteed. The department shall not provide financial assistance to the exporter where the principal amount of the pre-export loan or credit needed is less than \$10,000.

(c) Maximum amount of loan guarantee. The department's net exposure for financial assistance to an exporter, including all its affiliates, may not, at any one

time, exceed 85% of the loan amount. The guarantee amount may not exceed \$350,000, except in those instances where the department determines that substantial job creation is a major component of the project.

(d) Extent of participation. The department may participate in a loan guarantee to the extent necessary and appropriate to facilitate the required financing. The applicant may seek co-participation in financial assistance from other private and governmental sources, including the SBA, Eximbank, FCIA, and private insurers. In any event, the department's maximum participation in loan guarantee may not exceed 85% of the outstanding principal amount of the loan, and the lender must remain at risk for at least 10% of the outstanding principal balance amount.

(e) Maturity. The maturity of a loan guaranteed by the department may not exceed 12 months.

(f) Security. Loans must be secured by collateral of a type, amount, and value which, considered with other criteria affords reasonable assurance of repayment.

(g) Interest rates and fees. The lender may charge fees and a legal rate of interest on guaranteed loans.

(h) Fees. A guarantee fee of 1.0% of the principal balance guaranteed is payable by the lender to the department. A non-refundable application fee will also be required in the amount of \$100. The application fee is applied towards the guarantee fee if the project is accepted.

(i) Reporting Requirements.

(1) Reports by lender. The lender shall report in writing to the department as provided in the guarantee agreement. Reports must show the progress, repayment status, and principal balance, outstanding or undisbursed, for each loan guaranteed by the department. As soon as a payment is five days past the due date the lender must notify the department.

(2) Reports by exporter. The exporter shall report to the department immediately upon making shipment of the goods and shall provide copies of documents evidencing shipment according to the terms of trade. If requested by the department, the exporter shall submit other reports or documentation reasonably related to an assessment of the exporter's compliance with the Act and this chapter, or the terms of the sale transaction, loan agreements, or the department's guarantee.

§162.7. Criteria for Approval of Loan Guarantee.

(a) Need for financial assistance. The department shall determine whether the desired financing appears available to the applicant on reasonable terms from its own resources, such as the applicant's bank or

other lender, issuing of securities or stock, disposal of assets at a fair price, or utilization of the personal credit or resources of owners or principal shareholders of the applicant. The department may direct the applicant to other governmental sources such as SBA or Eximbank for co-participation.

(b) Reasonable risk. There must be reasonable assurance, in the judgment of the department, that the loan can and will be paid according to its terms. In making this judgment the department shall consider the following:

(1) evidence of the manner, means, and security of payment by the buyer and coverage of foreign risks;

(2) terms of the export sale or lease and projected earnings from the transaction;

(3) collateral and other sources of guarantee or insurance securing the loan, including personal guarantees;

(4) satisfactory credit history and financial condition of the applicant;

(5) financial projections; and

(6) ability of management.

(c) Eligibility of lender. The financial institution must have a continuing ability to evaluate, perform, and service the loan, to make reports as required under this chapter, and to collect the loan if requested by the department upon default.

§162.8. Loan Administration.

(a) Servicing. The lender shall service the loan and receive all payments of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the department to do so.

(b) Notification of nonpayment. If the exporter fails to make any payment of principal or interest on the due date, the lender shall immediately notify the exporter and the department of the payments due. If the exporter fails to cure the nonpayment within 30 days, the lender shall notify the department.

(c) Notification of modification of terms. If terms of the loan agreement are modified notification will be sent to the department by the lender immediately.

§162.9. Loan Review Committee.

(a) The loan review committee consists of the following members, appointed by the board:

(1) three members from financial institutions that are knowledgeable about, and experienced in, the exporting and export finance unique to Texas; and

(2) two members from export firms located in Texas, experienced in exporting, knowledgeable about the needs and

problems of small and entrepreneurial exporters, and actively employed or retired from an exporting firm, export trading company, or export management company.

(b) Appointments to the loan review committee shall be for two-year terms. Members of the loan review committee shall serve at the pleasure of the board and vacancies shall be filled by the board. A quorum shall consist of three members with a majority vote necessary for decision making.

§162.10. Eligible Private Lenders.

(a) Types of organizations. A participating private lender may be any financial organization whose primary business is lending money, is prepared to support a Texas exporter through the extension of credit, and receives participating status approval by the department.

(b) Lender qualification procedures.

(1) Each financial institution will be required to qualify itself for participation in the program by submission of a letter of request, accompanied by its latest audited financial statements, and the designation of the individual(s) within the financial institution who will be responsible for working with the department.

(2) As a condition to participation, a lender must agree to make investigation as it considers necessary to determine the exporter's viability, the economic benefits to be derived, the prospects for repayment, and other facts that it considers necessary to determine whether participation by the exporter is consistent with the purposes of the Act.

(c) Application process. A private lender interested in making a loan for an export transaction must submit a commitment letter to the department outlining the terms and conditions of the proposed loan. The name of the company, purpose of the loan, amount and use of funds, proposed closing date, collateral for the loan, and guarantee amount that the lender is seeking from the department must be included. Financial statements and additional information may be requested.

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

Issued in Austin, Texas, on August 17, 1989.

TRD-8907547

William D. Taylor
Interim Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 320-9679

Chapter 172. Texas Rural Economic Development Fund

• 10 TAC §§172.1-172.10

The Texas Department of Commerce (department) proposes new §§172.1-172.10, concerning the administration and implementation of the Texas Rural Economic Development Loan Fund. The new sections cover requirements and procedures for submission of applications for a loan guarantee and supporting documentation and the consideration of those applications by the department. The new sections provide clarification of the section required to obtain a loan guarantee and to provide certain approval standards pursuant to the Government Code, Chapter 481.

Gary King, director of finance, has determined that there will not be fiscal implications as a result of enforcing or administering these sections.

Mr. King also has determined that for each year of the first five year period the sections as proposed are in effect, the public benefit anticipated as a result of enforcing these sections as proposed is the accessibility of a loan guarantee for a qualified rural economic development transaction. There is not anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Bruce Anderson, General Counsel, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, within 30 days after the date of this publication.

The new sections are proposed under Texas Civil Statutes, Article 5190.2, which provide the Texas Department of Commerce with the authority to adopt necessary rules.

§172.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Rural Economic Development Act, Texas Government Code, Chapter 481, Subchapter F; and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, the Texas Department of Commerce prescribes the following sections regarding practice and procedure before the department in the administration and implementation of the Rural Economic Development Fund.

(b) Purpose. It is the purpose of the Texas Rural Economic Development Act to establish a program which promotes economic development and employment in rural communities across the state. Communities in this state are at a critical disadvantage in competing with communities in other states for location or expansion of businesses because of the availability of financing and other special incentives. The purpose of the new sections are to provide standards of eligibility and application procedures for a loan guarantee under the Rural Economic Development Act.

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

(1) Act—The Texas Rural Economic Development Act, Texas Government Code, Chapter 481, Subchapter F.

(2) Applicant—The private lender or user filing an application with the department for a loan guarantee.

(3) Application—An application, including supporting documentation, for participating in the program pursuant to the Act and this Chapter.

(4) Board—The board of directors of the department.

(5) Business day—A day on which the department is open for business. The term shall not include any Saturday, Sunday or traditional holiday officially observed by the state. The department's normal business hours are 8 a. m. to 5 p.m. each business day.

(6) City—Any municipality of the state incorporated under the provisions of any general or special law, or the home-rule amendment to the constitution.

(7) County—Any county of the state of Texas.

(8) Department—Texas Department of Commerce.

(9) Equity—The user's contribution to a project in the form of cash, land or depreciable property.

(10) Executive director—The executive director of the department.

(11) Federal agency—The United States of America, the President of the United States of America, and any department of or corporation, agency or instrumentality heretofore or hereafter created, designated or established by the United States of America.

(12) Fund—Texas Rural Economic Development Fund.

(13) Guarantee amount—With respect to loans made by financial institutions, is a sum measured in terms of United States dollars, that in the case of default by the borrower, guarantees repayment of the loan, not to exceed 85% of the loan. This amount may not exceed \$350,000, except in those instances where substantial job creation is a major component.

(14) Loan review committee—A committee appointed by the board to provide advisory services on the financing of rural loans guaranteed by the fund.

(15) Private lender—A lending institution, including a bank, savings bank, savings and loan association, trust company, or insurance company, or an individual

that the department determines is an experienced and sophisticated investor.

(16) Program—Texas Rural Economic Development Program.

(17) Project—The land, building, equipment, facilities and improvements (one or more), and working capital found by the department to be required or suitable for the promotion of and for use by a manufacturing or industrial enterprise, irrespective of whether in existence or required to be acquired or constructed after the making of such finding by the department.

(18) Qualified application—A completed application, including all documents and information required by the department and submitted by a user or private lender for a project.

(19) Rural area—A city having a population of 35,000 or less, or a county, not within a city's corporate limits, which has a population of 150,000 or less and which is predominantly rural in character. Population is to be determined by the decennial census or federal census estimate, whichever is most recently published by the United States Bureau of Census.

(20) Staff—The staff of the department.

(21) State—State of Texas.

(22) User—An individual, partnership, corporation, or any other private entity found by the department to be financially responsible to assume the obligation in connection with a project.

(d) Conflicts of interest.

(1) A member of the board, committee, agent, or employee of the department, in his or her own name or in the name of a nominee, may not hold an ownership interest of more than 7 1/2% or in excess of \$50,000 of the fair market value of an association, trust, corporation, partnership, or other entity that is, in its own name or in the name of a nominee, party to a contract or agreement under this chapter on which the member of the board, loan review committee, agent, or employee may be called on to act or vote.

(2) With respect to a direct or indirect interest, other than an interest prohibited by paragraph (1) of this subsection, in a contract or agreement under this chapter on which the member of the board, loan review committee, agent, or employee may be called on to act or vote, the member of the board, committee, agent, or employee shall disclose the interest to the department before the taking of final action by the department concerning the contract or agreement, and shall disclose the nature and extent of the interest and his or her acquisition of it. This disclosure shall be publicly acknowledged by the department and kept a part of its file. A member of the board, loan review committee, agent, or employee who holds such interest may not be officially

involved in regard to the contract or agreement, may not vote on a matter relating to the contract or agreement, and may not communicate with other members, agents, or employees concerning the contract or agreement.

(3) A contract or agreement made in violation of this subsection is void.

(e) Examination of records. Any party requesting the examination of records pursuant to the Open Records Act, Texas Civil Statutes, Article 6252-17a, shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, the appropriate fee must accompany the request.

(f) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Finance Division, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711.

§172.2. Texas Rural Economic Development Fund.

(a) Authority. The fund, established in the State Treasury, consists of appropriations or transfers made to the fund, guarantee fees, other money received from operation of the program, and interest paid on money in the fund.

(b) Purpose. The department uses money in the fund to guarantee not more than 85% of a loan made by a private lender to fund a project. In administering this Act, the department will give first preference to assistance to the food and fiber processing industries.

(c) Outstanding guarantees and insurance. The amount of loan guarantees outstanding by the department at any time may not exceed the amount available in the fund.

§172.3. Eligibility Requirements.

(a) Applicants. An applicant is eligible to submit an application to the department if the proposed user meets the following criteria:

(1) is engaged in a manufacturing or industrial enterprise;

(2) has a reasonable equity interest in the business, which is determined on a case-by-case basis by the department and the lender, however, the user must provide at least 10% of the total cost of the project; and

(3) creates at least 10 new jobs.

(b) Projects. In order for a project to be eligible for financing under the program, the project must meet the following requirements:

(1) be located within the state;

(2) consist of land, buildings,

equipment, facilities, and improvements (one or more) and working capital and otherwise meet the definition of a project set forth in the Act;

(3) be located in a rural area; and

(4) be principally used or occupied by one or more manufacturing or industrial enterprises.

(c) Project costs. The proceeds of a loan guaranteed by the fund may be used to finance the following costs:

(1) the purchase of land and the associated site improvements;

(2) construction, acquisition, or renovation of buildings;

(3) the purchase and installation of machinery and equipment; and

(4) working capital needs, not to exceed 20% of the total project costs.

(d) Ineligible project costs. Costs which are not eligible include:

(1) refinancing of existing debt;

(2) short-term financing for the construction or acquisition phase of a project;

(3) preliminary design stage costs which include but are not limited to market research, written cost estimates, development of the business plan; loan preparation costs and preliminary product development costs.

§172.4. Filing Requirements and Consideration of Applications.

(a) Application forms. An applicant or private lender seeking a loan guarantee from the department must use the application forms provided by the department. One original and two copies of the completed application with all required exhibits and attachments must be submitted in a three ring binder to the department during the business day.

(b) Initial review by staff. The staff reviews the application for completeness and notifies the applicant of any additional information required. When all required information has been received, the staff determines if the project meets the approval standards set forth in §172.7 of this title (relating to Criteria for Approval of Loan Guarantee).

(c) Consideration of qualified application. Following staff review, the loan review committee considers the qualified application. The board, shall consider the application, taking into account the purpose of the fund and the criteria and terms of the program.

(d) Approval of application. If the board approves the application, the executive director notifies the applicant in writing setting forth the terms and conditions of the

financial assistance approved. The department, together with the lender and any other private or governmental participants, prepares the written agreements and document necessary to close the loan or finalize the credit, in accordance with the terms and conditions set forth in the notice of approval.

(e) Denial of application. If the application is disapproved, the department notifies the applicant in writing of the reasons for denial.

(f) False information. An applicant who knowingly provides false information in an application under this chapter:

(1) may not submit an application under this chapter before two years after the date that the application containing the false information was submitted; and

(2) is liable to the state and any private lender involved for any expense incurred by the state or private lender that would have not been incurred if the applicant had not provided the false information.

§172.5. Contents of Application.

(a) The application must set forth the information necessary for the determination of eligibility and must include the following:

(1) applicant's name and address;

(2) names, addresses, resumes and references of owners, investors, and management of the business;

(3) articles of incorporation and bylaws or other agreements that describe the legal operation or structure of the business;

(4) name and address of the owner or operator of the business during the term of the loan;

(5) a business plan which contains information regarding the products or services to be offered by the applicant; job descriptions with salary or wage information by job category; educational requirements by job category; and methods of accounting, financing, marketing sales, merchandising, and other information indicative of business growth and expansion;

(6) letters of commitment from all funding sources;

(7) up to three years of historical balance sheets, cash flow statements, income statements, and federal tax returns;

(8) pro forma balance sheets, cash flow statements, and income statements for three years;

(9) a statement of licensing requirements;

(10) a statement that addresses the effect of the business on the tax base of the area and other positive and negative

effects of the project on the area;

(11) a statement that addresses the environmental impact of the project;

(12) assurance of compliance with local zoning laws and building codes and that the necessary public utilities are available or will be available when needed by the project;

(13) approximate date construction will commence, construction completion date, and the date by which the project will be fully operational; and

(14) documentation that the preliminary design stage has been completed.

(b) The applicant must submit any other information as requested by the department in order to make a prudent loan decision

§172.6. General Terms and Conditions of Department's Financial Commitment.

(a) Permissible use of financial commitment. The department's financial commitment is used to finance the project costs.

(b) Minimum loan or credit guaranteed. The department shall not provide financial assistance to a user where the principal amount of the loan or credit needed is less than \$50,000.

(c) Maximum amount of loan guarantee. The department's net exposure for financial assistance to a business, including all its affiliates, may not, at any one time, exceed 85% of loan. This amount may not exceed \$350,000, except in those instances where substantial job creation is a major component.

(d) Extent of participation. The department may participate in a loan guarantee to the extent necessary and appropriate to facilitate the required financing. The applicant may seek coparticipation in financial assistance from other private and governmental sources, including the SBA, Farmers Home Administration, Community Development Block Grant, and private sources. In any event, the department's maximum participation in a loan guarantee may not exceed 85% of the principal amount of the loan, and the private lender must remain at risk for at least 10% of the principal amount.

(e) Maturity. The maturity of a loan guaranteed by the department may not exceed 15 years, subject to the useful life of the assets being financed.

(f) Security. Loans must be secured by collateral or a type, amount, and value which, considered with other criteria affords reasonable assurance of repayment.

(g) Interest rates and fees. The lender may charge fees and a legal rate of interest on guaranteed loans.

(h) Fees. A guarantee fee of one

and one-half percent of the principal balance guaranteed is payable by the lender to the department. A non-refundable application fee will also be required in the amount of \$100.

(i) Reporting Requirements.

(1) Reports by lender. The lender shall report in writing to the department as provided in the guarantee agreement. Reports must show the progress, repayment status, and principal balance, outstanding or undisbursed, for each loan guaranteed by the department.

(2) Reports by user. The user shall provide annual financial reports. If requested by the department, the user shall submit other reports or documentation reasonably related to an assessment of the user's compliance with the Act and this chapter, or the terms of the loan agreement or the department's guarantee.

§172.7. Criteria for Approval of Loan Guarantee.

(a) Need for financial assistance. The department shall consider whether the desired financing appears available to the applicant on reasonable terms from its own resources, such as the applicant's bank or other lender, issuing of securities or stock, disposal of assets at a fair price, or utilization of the personal credit or resources of owners or principal shareholders of the applicant. The department may direct the applicant to other governmental sources such as SBA, Farmers Home Administration, or Community Development Block Grant for coparticipation.

(b) Reasonable risk. There must be reasonable assurance, in the judgment of the department, that the loan can and will be paid according to its terms. In making this judgment the department considers the following:

(1) evidence of the manner, means, and security of payment by the applicant;

(2) projected earnings of the applicant;

(3) firm commitments from other independent and responsible financial sources for all other funds in excess of the loan guarantee by the department;

(4) collateral and other sources of guarantee or insurance securing the loan;

(5) credit history and financial condition of the applicant;

(6) financial projections;

(7) ability of management.

(c) Eligibility of lender. The financial institution must have a continuing ability to evaluate, perform, and service the loan, to make reports as required under this chapter, and to collect the loan if requested by the department upon default.

§172.8. Loan Administration.

(a) Servicing. The lender services the loan and receives all payments of principal and interest. In the event of default, the lender shall continue to service the loan if requested by the department to do so.

(b) Notification of nonpayment. If the business fails to make any payment of principal or interest on the due date, the lender shall immediately notify the business of the payments due. If the business fails to cure the nonpayment within 30 days, the lender shall notify the department and the department shall take appropriate legal action.

(c) Notification of modification of terms. If terms of the loan agreement are modified, notification must be sent to the department by the lender immediately.

§172.9. Loan Review Committee.

(a) The Loan Review Committee consists of the following members, appointed by the board:

(1) three members from financial institutions that are knowledgeable about, and experienced in, financing projects in rural areas; and

(2) two members from manufacturing or industrial enterprises located in Texas, experienced in and knowledgeable about the needs and problems of small businesses located in rural areas.

(b) The appointments of the board shall be for two-year terms. Members of the loan review committee shall serve at the pleasure of the board and vacancies shall be filled by the board.

§172.10. Eligible Private Lenders.

(a) Types of organizations. A participating private lender institution may be any financial organization whose primary business is lending money, is prepared to support a business through the extension of credit, and receives participating status approval by the department.

(b) Private lender qualification procedure.

(1) Each financial institution is required to qualify itself for participation in the program by submittal of a letter of request, accompanied by its latest audited financial statements, and the designation of the individual(s) within the financial institution who will be responsible for working with the department.

(2) As a condition to participation, a lender must agree to make investigation as it considers necessary to determine the user's viability, the economic benefits to be derived, the prospects for repayment, and other facts that it considers necessary to determine whether participa-

tion by the user is consistent with the purposes of the Act.

(c) Application process. A lender interested in making a loan under the fund submits an application along with a commitment letter to the department outlining the terms and conditions of the proposed loan. The name of the company, purpose of the loan, amount and use of funds, proposed closing date, collateral for the loan, and guarantee amount that the lender is seeking from the department must be included.

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

Issued in Austin, Texas on August 21, 1989

TRD-8907629

William D. Taylor
Interim Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 320-9666

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TITLE 19. EDUCATION
Part I. Texas Higher
Education Coordinating
Board
Chapter 25. Administrative
Council

Subchapter A. General
Provisions

• **19 TAC §25.2, §25.3**

The Texas Higher Education Coordinating Board proposes amendments to §25.2 and §25.3, concerning general provisions. The purpose of the amendments is to incorporate into the rules and regulations provisions of Senate Bill 457, 71st Legislature, 1989, relating to administration of the Higher Education Insurance Program.

Kathy Lewis, director, Higher Education Insurance Program, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Lewis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be to provide for additional expertise and capabilities available on the Administrative Council to conduct its increasingly complex duties and to provide a balance of interests between employees, higher education institutions, and experts in the insurance field. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kathy Lewis, Director, Higher Education Insurance Program, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The amendments are proposed under the Texas Insurance Code, Article 3.50-34, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provisions of the Act to carry out its statutory responsibilities.

§25.2. Terms of Office - Administrative Council.

(a) Except as noted herein, each member of the Administrative Council shall be selected for a six-year term to expire August 31. The presidents of the three [six] largest senior institutions acting as a group, or three largest junior institutions acting as a group, or the advisory committee or the governor [commissioner of higher education], dependent upon how the vacated position was originally filled, shall name an individual to serve the balance of any vacated term.

(b) The persons designated as members of the Administrative Council must have demonstrable qualifications for the administration of the program established by the Act. A member selected by the three largest senior level institutions, or the the three largest junior level institutions, or the advisory committee shall be an employee as defined in the Act. A member appointed by the governor shall be knowledgeable about the actuarial principles necessary to analyze higher education insurance plans and is not required to be an employee as defined in the Act.

§25.3. Vacancy - Administrative Council. A vacancy exists when any member selected by the three [six] largest senior level institutions or the three largest junior level institutions or the advisory committee or appointed by the governor [commissioner of higher education] who serves on the Administrative Council:

(1) resigns his or her position on the Administrative Council;

(2) terminates active employment with a public senior level institution of higher education in Texas, if the position was originally filled by someone selected by the presidents of the three [six] largest senior level institutions;

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

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

Issued in Austin, Texas on August 21, 1989.

TRD-8907633

Kathy Lewis
Director
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 462-6420

• 19 TAC §25.40

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §25.40, concerning deficiencies in Institutional Programs. This section is being replaced and rewritten to incorporate into the rules and regulations provisions of Senate Bill 457, 71st Legislature, 1989, relating to the administration of the higher education insurance program.

Kathy Lewis, director, Higher Education Insurance Program, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Lewis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be to provide more timely compliance monitoring and oversight of institutional group insurance programs; require notification of enrollees of deficiencies in their plans. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kathy Lewis, Director, Higher Education Insurance Program, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The repeal is proposed under the Texas Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

§25.40. Deficiencies in Institutional Programs.

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

Issued in Austin, Texas on August 21, 1989.

TRD-8907631 Kathy Lewis
Director
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 462-6420

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Subchapter B. Administration
of the Texas State College
and University Employees
Uniform Insurance Benefits
Program

• 19 TAC §25.40

The Texas Higher Education Coordinating

Board proposes new §25.40, concerning deficiencies in Institutional Programs. The purpose of the addition of a new rule is to incorporate into the rules and regulations provisions of Senate Bill 457, 71st Legislature, Regular Session, relating to administration of the higher education insurance program.

Kathy Lewis, director, Higher Education Insurance Program, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Lewis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the section will be to provide more timely compliance monitoring and oversight of institutional group insurance programs; require notification of enrollees of deficiencies in their plans. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kathy Lewis, Director, Higher Education Insurance Program, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711

The new section is proposed under the Texas Insurance Code, Article 3.50-3, which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

§25.40. Contract Review; Correction of Deficiencies.

(a) Each institution shall submit a copy of its contract and/or amendments for insurance coverage and its benefits report to the executive secretary on or before the 30th day before the effective date of the contract. If the contract is not available on or before the 30th day before the effective date of the contract, the institution shall submit a copy of the bid specifications for the institution's program. Such bid specifications shall include a provision that the bid specifications will serve in lieu of the contract until the contract is received by the institution. Upon receipt of the contract, the institution shall submit the contract to the executive secretary.

(b) The administrative council shall:

(1) review each institution's contract and/or bid specifications and benefits report; and

(2) determine whether the institution's insurance program contains any deficiencies concerning the basic coverage standards, administrative costs, and practices provided under this Act.

(c) If the administrative council determines that an institution's insurance program does not comply with the council's rules or standards, the council shall:

(1) notify the president of the institution and provide the institution not

more than two years to comply with the council's rules and standards; and

(2) report its action to the commissioner of higher education.

(d) If an institution's insurance program is not in compliance with the council's rules and standards, the executive secretary shall report the compliance problem to an appropriate faculty or staff body of the affected institution such as a faculty senate or council.

(e) The affected institution may appeal the administrative council's determination of noncompliance to the Texas Higher Education Coordinating Board. The coordinating board shall affirm or reverse the administrative council's decision not later than the 90th day after the receipt of the appeal. If the coordinating board reverses the council's decision, the board shall return the appeal to the council with written instructions for disposition.

(f) If an institution does not comply with the council's rules and standards as directed by the administrative council, the council may notify the institution to establish the plans the council determines are necessary to address the problem and the council shall report its action to the commissioner of higher education. If the plans are not established by the institution within six months after the date of notification, the council shall notify the state comptroller of public accounts and report its action to the commissioner of higher education. The comptroller shall withhold state insurance premium matching funds from the affected institution until the administrative council notifies the comptroller that the compliance problem has been corrected.

(g) Each contract for insurance coverage entered into by an institution must include a provision that if the administrative council finds a contract is not in compliance with the basic coverage standards and rules adopted by the administrative council under this Act, the insurance carrier and the institution must negotiate and attempt to resolve the problem. The existing contract remains in effect until that contract can be amended to correct the problem.

(h) A member of the administrative council selected from an institution of higher education may not participate in a decision concerning that institution's insurance program compliance with basic coverage standards and rules adopted by the administrative council under this Act.

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

Issued in Austin, Texas on August 21, 1989.

TRD-8907632 Kathy Lewis
Director
Texas Higher Education
Coordinating Board

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 462-6420

◆ ◆ ◆
• 19 TAC §25.54

The Texas Higher Education Coordinating Board proposes an amendment to §25.54, concerning studies, reports, records, and audits. The purpose of the amendment is to incorporate into the rules and regulations provisions of Senate Bill 457, 71st Legislature, 1989, relating to administration of the Higher Education Insurance Program.

Kathy Lewis, director, Higher Education Insurance Program, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Lewis also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be to help ensure that state funds are appropriately spent. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kathy Lewis, Director, Higher Education Insurance Program, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711

The amendment is proposed under the Texas Insurance Code, Article 3.50-3, which provide the Administrative Council with the authority to adopt rules and regulations consistent with the provision of the Act to carry out its statutory responsibilities.

◆ ◆ ◆
§25.54. *Studies, Reports, Records, and Audits.*

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

(d) The state auditor shall conduct periodic audits of each institution's insurance program to verify that each person enrolled in the insurance program is eligible for the program benefits.

(e) The executive secretary shall notify the state auditor if the executive secretary becomes aware of any inappropriate expenditure of insurance program funds.

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

Issued in Austin, Texas, on August 21, 1989.

TRD-8907630

Kathy Lewis
Director
Texas Higher Education
Coordinating Board

◆ ◆ ◆
Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 462-6420

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 101. General Rules

◆ ◆ ◆
• 31 TAC §101.1

The Texas Air Control Board (TACB) proposes an amendment to §101.1, concerning definitions. The proposed amendment will define various terms relating to the incineration of infectious materials. The definitions are being proposed in response to House Bill 2468, enacted by the 71st session of the Texas Legislature, which requires that TACB initiate rulemaking concerning commercial infectious waste incinerators. Specifically, the agency proposes to add definitions of "commercial infectious waste incinerator," "fomites," and "infectious waste." The definitions are being proposed in support of concurrently proposed new §§111.121-111.129, concerning incineration.

There are several other related definitions in §101.1 for which TACB is requesting comments, namely: "commercial incinerators," "domestic waste," "garbage," "incinerator," "municipal solid waste," and "rubbish." These definitions have been in effect for several years and the agency is soliciting comments on whether the existing definitions continue to be appropriate.

Bennie Engelke, director of management and staff services, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local units of government or for small businesses as a result of enforcing or administering the section.

Les Montgomery, director of technical support and regulation development program, has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improved understanding and more consistent application of TACB regulations where the proposed and existing definitions are used. There is no anticipated cost to individuals who may be impacted by the proposed revisions.

Public hearings on this proposal are scheduled for the following times and places: September 21, 1989, 10 a.m., Texas Air Control Board Auditorium, 6330 Highway 290 East, Austin; and September 21, 1989, 7 p.m., City of Houston Pollution Control Auditorium, 7411 Park Place Boulevard, Houston.

Copies of the proposed sections are available at the Central Office of the TACB, 6330 Highway 290 East, Austin, Texas 78723, and at all Texas Air Control Board regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by the Regulation Development Section by 4 p.m. on September 22, 1989, at the TACB central office, will be included in the hearing record.

The amendment is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which

provide TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation TACB makes.

◆ ◆ ◆
§101.1. *Definitions.* Unless specifically defined in the Act or in the rules of the board, the terms used by the board have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by Texas Civil Statutes, Article 4477-5, the following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

Commercial Incinerator (incinerators)—An incinerator used to dispose of waste material from retail and wholesale trade establishments. (See also: Incinerator)

Commercial Infectious Waste Incinerator—A facility that accepts for incineration infectious waste generated outside the incinerator property boundaries of the facility (See also: Incinerator, Infectious waste).

Fomites—Substances, such as clothing, capable of absorbing and transmitting the contagium of disease (See also: Infectious waste).

Infectious waste—Equipment, instruments, utensils, and fomites of a disposable nature from the rooms of patients who are suspected to have or have been diagnosed as having a communicable disease and must, therefore, be isolated as required by public health agencies; laboratory wastes such as pathological specimens and disposable fomites attendant thereto; and surgical operating room pathological specimens and disposable fomites attendant thereto and similar disposable materials from outpatient areas and emergency rooms (See also: Fomites).

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

Issued in Austin, Texas, on August 16, 1989.

TRD-8907484

Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption: October 20, 1989

For further information, please call: (512) 451-5711, ext. 354

◆ ◆ ◆
Chapter 111. Control of Air Pollution from Visible Emissions and Particulate Matter

Incineration

◆ ◆ ◆
• 31 TAC §111.121

(Editor's note: The text of the following section proposed for repeal will not be published. The

section may be examined in the offices of the Texas Air Control Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Air Control Board (TACB) proposes to repeal §111.121, concerning single-chamber incinerators. In concurrent action, the TACB proposes a new undesignated head to, §§111.121-111.129, concerning incineration.

The new sections are proposed in order to strengthen enforceability and to outline equivalency requirements for single-chamber incinerators. Because the changes are extensive, the staff has determined that it would be administratively more efficient to propose concurrently the repeal of the existing undesignated head and the addition of a new one.

Bennie Engelke, director of management and staff services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Les Montgomery, director of the technical support and regulation development program, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to eliminate weak and inconsistent language. The public benefit from the concurrent adoption of the new section would be a better understanding and enforcement of the repeal. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Public hearings on this proposal are scheduled for the following times and places: September 21, 1989, 10 a.m., Texas Air Control Board, Auditorium, 6330 Highway 290 East, Austin; and September 21, 1989, 7 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston.

Copies of the proposed sections are available at the central office of the TACB, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by the Regulation Development Section by 4 p.m. on September 22, 1989, at the TACB central office will be included in the hearing record.

The repeal is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

§111.121. Single-Chamber Incinerators.

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

Issued in Austin, Texas on August 16, 1989.

TRD-8907485

Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption: October 20, 1989

For further information, please call: (512) 451-5711, ext. 354

• 31 TAC §§111.121, 111.123, 111.125, 111.127, 111.129

The Texas Air Control Board (TACB) proposes §§111.121, 111.123, 111.125, 111.127, and 111.129, concerning incineration. In concurrent action, the TACB proposes to repeal existing §111.121. The proposed new §111.121, concerning single-chamber incinerators, would establish limitations on the burning of domestic or municipal solid waste in residential, commercial, hospital/pathological waste, of publicly-owned incinerators and would prohibit the burning of other materials. The proposed new §111.123, concerning dual- or multiple-chamber incinerators, would establish opacity limits, as well as emissions limits, for particulates, hydrogen chloride (HCl), and organics for residential, publicly-owned, hospital/pathological waste, and commercial incinerators. The new section also would establish separate temperature, retention time, and emissions and opacity limits for commercial infectious waste incinerators, which are defined in the proposed section as facilities that accept for incineration infectious waste generated outside the property boundaries of the facility. The proposed new §111.125, concerning testing requirements, would establish test methods for determining compliance regarding particulate, HCl, and organic compound emissions. The proposed new §111.127, concerning monitoring requirements, would require facilities to install and operate continuous monitoring devices to record the waste flow to each incinerator and the oxygen content and exhaust gas temperature of the incinerator stack. The proposed new §111.129, concerning exemptions, would exempt incinerators burning less than five tons per day of domestic or municipal solid waste from all specified requirements with the exception of opacity limits.

The new sections are being proposed in response to House Bill 2468 enacted by the 71st Texas Legislature and requiring the TACB to initiate rulemaking concerning commercial infectious waste incinerators. The new sections are intended to improve enforceability regarding single- and multiple-chamber incinerators by establishing specific requirements and defining equivalency.

Bennie Engelke, director of management and staff services, has determined that for the first five years the proposed sections are in effect, the fiscal implications for state and local units of government would be the cost of staff resources to accomplish increased regulation of residential, commercial, publicly-owned, and hospital/pathological waste incinerators burning more than five tons of domestic or municipal solid waste per day and all incinerators burning commercial infectious waste. The fiscal implications for small businesses would involve meeting increased regulatory requirements for owners of such incinerators. The staff estimates that the cost of meeting the monitoring requirements in the proposed sections would be \$9,000 per facility.

Les Montgomery, P.E., director of technical support and regulation development program, has determined that for each of the first five years the sections as proposed are in effect the public benefit anticipated as a result of implementing the sections will be more effective enforcement associated with incineration. There is no anticipated cost to individuals who are required to comply with section as proposed.

Public hearings on this proposal are scheduled for the following times and places: September 21, 1989, 10 a.m., Texas Air Control Board Auditorium, 6330 Highway 290 East, Austin; and September 21, 1989, 7 p.m., City of Houston, Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston.

Copies of the proposed sections are available at the Central Office of the TACB, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. TACB would appreciate receiving five copies of testimony prior to or at the hearings. Written testimony received by the Regulation Development Section by 4 p.m. on September 22, 1989 at TACB central office, will be included in the hearing record.

These new sections are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation TACB makes.

§111.121. *Single-Chamber Incinerators.* No person shall cause, suffer, allow, or permit the burning of domestic or municipal solid waste as defined in §101.1 of this title (relating to Definitions) in a single-chamber residential, publicly-owned, hospital/pathological waste, or commercial incinerator unless the incinerator has been demonstrated to provide equivalent performance to multiple-chamber incinerators as specified in §111.123(a) of this title (relating to Dual- or Multiple-Chamber Incinerators) and is approved by the executive director. Single-chamber incineration of any other material is prohibited.

§111.123. *Dual- or Multiple-Chamber Incinerators.*

(a) No person shall cause, suffer, allow, or permit a dual- or multiple-chamber residential, publicly-owned, hospital/ pathological waste, or commercial incinerator burning domestic or municipal solid waste as defined in §101.1 of this title (relating to Definitions) to discharge into the atmosphere unless the following requirements are met.

(1) Particulate emissions shall not exceed 0.18 gram per dry standard cubic meter (g/dscm) or 0.08 grain per dry standard cubic foot (gr/dscf), when corrected for the amount of oxygen in the stack gas according to the formula:

$$P_c = P_m \times \frac{14}{21-Y}$$

Where:

P_c is the corrected concentration of particulate matter,

P_m is the measured particulate matter concentration, and

Y is the measured concentration of oxygen in the stack gas using the Orsat method for oxygen analysis of dry flue gas as defined in 40 CFR Part 60, Appendix A

(Method 3).

(2) Hydrogen chloride (HCl) emissions greater than 1.8 kilograms (four pounds) per hour require either a removal efficiency of 99% or an emission rate not to exceed 1.8 kilograms per hour.

(3) An overall destruction and removal efficiency of 99% is required for each principal organic constituent contained in burned organic waste.

(4) Visible emissions shall not exceed on opacity of 20% averaged over any six-minute period.

(b) No person shall cause, suffer, allow, or permit the burning of infectious waste in a facility that accepts for incineration infectious waste generated outside the property boundaries of the facility unless the facility meets the following requirements.

(1) The incinerator must be equipped with a secondary chamber which retains all combustion gases for one second or longer at a temperature of 1,800 degrees fahrenheit or higher.

(2) Particulate emissions shall not exceed 0.09 g/dscf or 0.04 gr/dscf, when corrected for the amount of oxygen in the stack gas as specified in subsection (a)(1) of this section.

(3) A removal efficiency of 99% is required for HCl emissions

(4) An overall destruction and removal efficiency of 99.99% is required for each principal organic constituent contained in burned organic waste.

(5) Visible emissions shall not exceed an opacity of 5.0% for any six-

minute period from any commercial infectious waste incinerator except for emissions during the cleaning of a firebox or the building of a new fire, soot-blowing, equipment changes, ash removal, and rapping of precipitators. During those periods, the visible emissions may not exceed 20% for a period of six minutes in any 60 consecutive minutes. This exemption shall not apply to the emissions mass rate standard as outlined in §111.151 of this title (relating to Allowable Emissions Limits).

(6) Compliance with the requirements of this section shall be as soon as practicable but no later than May 31, 1991.

§111.125. Testing Requirements. Compliance with §111.121 of this title (relating to Single-Chamber Incinerators) and §111.123 of this title (relating to Dual- or Multiple-Chamber Incinerators) shall be determined by applying the following test methods, as appropriate:

(1) Particulate matter. Test Method 5 (40 Code of Federal Regulations 60, Appendix A) modified to include particulate caught by impinger train;

(2) Hydrogen chloride. test method outlined in Chapter 5 of the latest edition of the Texas Air Control Board "Sampling Procedures Manual";

(3) Organic compounds. Test Method 25A or 25B (40 Code of Federal Regulations 60, Appendix A) for determining total gaseous organic concentrations using flame ionization or nondispersive infrared analysis; or

(4) Equivalent test methods. equivalent test methods approved by the executive director.

§111.127. Monitoring Requirements. Facilities subject to the requirements of §§111.121, 111.123, and 111.125 of this title (relating to Single-Chamber Incinerators, Dual- or Multiple Chamber Incinerators and Testing Requirements) shall install, calibrate, maintain, and operate a monitoring device that continuously measures and records the oxygen content and temperature of the exhaust gas and the supplemental fuel flow to the incinerator. The monitoring device for incinerators equipped with a wet scrubbing device shall continuously measure and record the pressure drop of the gas flow through the wet scrubbing device. All such monitoring equipment must be approved by the executive director of the Texas Air Control Board.

§111.129. Exemptions. Incinerators burning less than five tons per day of domestic or municipal solid waste shall be exempt from the requirements of §§111.121; 111.123(a)(1), (2), and (3); 111.125; and 111.127 of this title (relating to Single-Chamber Incinerators, Dual- or Multiple-Chamber Incinerators, Testing Requirements, and Monitoring Requirements)

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

Issued in Austin, Texas on August 16, 1989.

TRD-8907486

Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption: October 20, 1989

For further information, please call: (512) 451-5711, ext. 354

Part IX. Texas Water Commission

Chapter 325. Certificates of Competency

Subchapter A. Certificates of Competency

The Texas Water Commission proposes the repeal of §§325.2-325.5; new §§325.2-325.5 and 325.16, and amendments to §§325.1, 325.6, 325.7, 325.9, 325.12 and 325.15, concerning certificates of competency for wastewater treatment plant and collection system operators and wastewater treatment facility operations companies. The current §§325.2-325.5 are repealed in order that they may be replaced by sections which add new provisions and make substantive changes to existing provisions, resulting in the reorganization of current Subchapter A. These proposed sections are presented as follows. Sections 325.2, 325.4, and 325.5 of the current rules cover all wastewater treatment plant operators, whether they operate treatment facilities or collection system. Proposed sections divide the requirements into those for treatment plant operator in §325.2 and collection system operator in §325.3. New requirements covering classification of wastewater treatment facilities and the level of certification required of the operator of a certain facility are provided in proposed §325.4.

Finally, provisions relating to the application for certification under current §325.3 would be moved substantially unchanged, to proposed §325.5.

The proposed sections would amend §325.1, relating to the definitions of terms found in Chapter 325 by adding definitions for the terms "wastewater collection system" and "wastewater collection system operator."

The proposed sections would amend current §325.2 by adding new subsections (c)-(n). Proposed subsections (c)-(j) are substantially the same as current §325.4. Subsection (g), however, proposes that an additional 20-hour designated course (several are listed as options) be taken at the Class A, B, and C levels. This would not become effective until January 1, 1990. Proposed subsection (k) is the same as current §325.3 and proposed subsection (m) is the same as current §325.4(f). Proposed subsection (l) is new and provides that operators of both wastewater treatment plants collection systems need not hold both types of certificates. Proposed subsection (n) is new and provides that operators of domestic waste facilities located at an industry which is regulated by an industrial waste permit is required to be certified if the domestic waste outfall is separate from the one for the treated industrial waste.

Proposed §325.3 would add new provisions relating to the certification of collection system operators. This new section would provide that all operators must be certified, but new operators may be employed as an operator-in-training for one year without certi-

fication. The proposed sections also provide that person whose certificate is revoked or suspended may not operate a facility without commission authorization. The proposed sections would also divide the certifications into two levels - Class I and Class II - and provide minimum qualifications for obtaining each, as well as application fee amounts and maximum terms for certification.

Proposed §325.4 would classify wastewater treatment facilities as they relate to the degree of certification required by a facility's operator. Classification is done by the type of system and permitted daily average flow of the facility. This proposed section would not become effective until January 1, 1990.

Provisions relating to the application for certification under current §325.3 would be moved, substantially unchanged, to proposed §325.5.

The proposed sections would amend current §325.6, relating to certification renewal by providing that failure to submit a renewal application and fee within 30 days of expiration of the certification will require the applicant to re-take the examination for such certification. The proposed amendment would also provide requirements for collection system operators wishing to renew their certification. Class D certificates would not be renewable if the operator works at any activated sludge type facility, or at a trickling filter or RBC facility, and the facility has a permitted daily average flow of 100,000 gpd or greater. Additionally, to renew a certificate which has been expired for a year or more, the applicant would have to satisfy all current requirements necessary for the issuance of a new certification. Finally, if a certificate expires when the operator is serving actively in the military, the certification may be renewed without re-examination.

Provisions relating to certificates for wastewater treatment facility operations companies under current §325.7 are not substantially changed by proposed changes to the section.

The proposed sections would amend current §325.9, relating to the reports, applications, and certification renewal of wastewater treatment facility operations companies by adding subsection (c), providing that a certification will automatically be revoked if the company ceases operations, is sold, or reorganized under different ownership and control. Such certificates may not be transferred.

Provisions relating to public hearings on the renewal of certificates for wastewater treatment facility operations companies under current §325.10 are not substantially changed by proposed changes to the section.

Provisions relating to certificate revocation and suspension under current §325.11 are not substantially changed by proposed changes to the section.

Provisions relating to notice of hearings under current §325.12 are not substantially changed by proposed changes to the section.

The proposed sections would amend current §325.15, relating to perpetual certificates of competency by providing that an operator who has held a valid certificate for at least 30 years shall, upon proper application and verification, retain his certificate in perpetuum.

Finally, proposed §325.16 is new and provides for the nonrenewal of a certificate of

competency to a person in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation unless certain conditions are met. This provision would not become effective until September 1, 1991.

Roger Bourdeau, chief fiscal officer, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Bourdeau also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be more competent operators and less pollution of waters in the state. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kevin McCalla, Senior Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087.

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Water Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brasos Street, Austin.)

• 31 TAC §§325.2-325.5

The repeals are proposed under the Texas Water Code, §5.103, and §5.105, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§325.2. Certificates for Treatment Plant Operators.

§325.3. Application.

§325.4. Classes and Qualifications of Certificates for Operators.

§325.5. Terms of Certificates for Operators.

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

Issued in Austin, Texas, on August 21, 1989.

TRD-8907624

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-8087

• TAC 31 §§325.1-325.7, 325.9-325.12, 325.15, 325. 16

The new sections are proposed under the Texas Water Code, §§.109 and §§. 106, which provides the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

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

Certificate of Competency—The certificate issued by the Texas Water Commission to treatment plant and collection system operators and wastewater treatment facility operations companies to operate or assist in the operation of a wastewater treatment facility and/or [or] collection system.

Wastewater collection system—The trunks, arterials, channels, conduits, manholes, pumps, pumping stations, piping, and other appurtenances necessary to collect wastewater from a community, corporation, company, or entity which produces sewage and other liquid wastes treatable in a wastewater treatment facility.

Wastewater collection system operator—Any person who supervises a collection system maintenance crew which operates, maintains, adjusts, regulates, and/or repairs the structures and devices of a wastewater collection system and who is responsible for one or both of the following tasks:

(A) determining remedial action in emergencies; and

(B) making operating decisions based on superintendent's directives or, in the absence of the superintendent, making own operating decisions.

Wastewater treatment plant operator—Any person who operates a domestic wastewater treatment facility [or collection system], including those who perform day-to-day maintenance work so long as the primary function of the operator involves process control, [and those who supervise collection systems maintenance crews.] but excluding such persons as directors of public works, city engineers, city managers, or other persons whose duties do not include actual operation or direct supervision of wastewater disposal facilities.

§325.2. Certificates for Wastewater Treatment Plant Operators.

(a) Any wastewater treatment plant operator as defined in §325.1 of this title (relating to Definitions) must hold a valid certificate of competency issued pursuant to this chapter with the following exception. A person first entering the field of wastewater collection may be employed as an operator-in-training under constant supervision, without certification, for a maximum of one year after employment. This time period will allow the person to obtain the required designated training courses and take the appropriate examination. Any applicant who is unable to acquire current certifica-

tion within one year of his or her employment is prohibited from performing any functions in the collection system other than minor maintenance work unless specifically authorized to do so by the commission. Upon suspension or revocation of a certificate under §325.11 of this title (relating to Revocation or Suspension of Certificate), the operator shall no longer operate or assist in operation of any wastewater treatment plant, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated.

(b) Each holder of a wastewater disposal permit for a wastewater treatment facility shall employ one or more treatment plant operators holding valid certificates of competency issued under the direction of the commission.

(c) The certificates of competency for wastewater treatment plant operators shall be Class A, Class B, Class C, and Class D. The qualification requirements for each class of certificate shall include a minimum level of formal education, a minimum level of training, a period of experience as a treatment plant operator, a grade of 70% or higher on a written examination for that certificate class, and payment of the applicable fee. If the applicant fails to pass an examination, the applicant must wait a minimum of three months before taking any examination. The executive director may require additional training after a failed examination.

(d) The qualification requirements for each class of certificate for treatment plant operators are as follows:

CERTIFICATE	EDUCATION	and	YEARS EXPERIENCE[*]	and	HOURS TRAINING
Class A	Masters College Degree;		4		plus 160
	or Bachelors College Degree;		5		plus 160
	or High School Graduate				
	or equivalent.**		8		plus 160

Class B	Bachelors College Degree; or High School Graduate or equivalent.	and 1	plus 100
		and 5	plus 100
Class C	High School Graduate or equivalent.	and 2	plus 60
Class D	High School Graduate or equivalent; or less than High School Graduate or equivalent.	and 0	plus 20
		and 0	plus 40

for
see
** Diploma of General Educational Development (G.E.D.).

(e) Experience must be actual wastewater treatment facility experience and not experience which is non-operational in nature. Credit for experience not directly connected with wastewater treatment facility operation or maintenance will be approved only if the experience involves tasks similar to those required for operation of wastewater treatment facilities. Each year of related experience will count as only one-half year of experience.

(f) The only college degrees which will satisfy the college degree requirement are those with a major in chemistry, biology, microbiology, bacteriology, or similar disciplines, or in any engineering discipline eligible for registration as a professional engineer in the State of Texas.

(g) (Effective beginning January 1, 1990) The hours of training which are required in subsection (d) of this section must be in approved courses which include, but are not limited to, the following or their equivalents:

(1) Class A—wastewater treatment, wastewater collection, wastewater laboratory, water utility management, and either water utility safety or advanced wastewater laboratory;

(2) Class B—wastewater treatment, wastewater collection, wastewater laboratory, and either water utility safety or advanced wastewater laboratory;

(3) Class C—basic wastewater operation, wastewater treatment, and either wastewater collection, wastewater laboratory, or water utility safety;

(4) Class D—basic wastewater operation (plus either wastewater treatment or water utility safety for 40 hour requirement).

(h) (Effective until January 1, 1990). The hours of training which are required in subsection (d) of this section must be in approved courses which include, but are not limited to, the following:

(1) Class A—wastewater treatment, wastewater collection, laboratory, and management;

(2) Class B—wastewater treatment, wastewater collection, and laboratory;

(3) Class C—basic wastewater operation and either wastewater treatment or wastewater collection;

(4) Class D—basic wastewater operation.

(i) For treatment plant operators who qualify for Classes A - C with an education of high school or equivalent, one year of college (32 semester hours approved by the executive director) or an additional

40 hours of training credits approved by the executive director may be substituted for one year of the experience requirement; however:

(1) for Class A certificates, the actual work experience shall not be less than six years;

(2) for Class B certificates, the actual work experience shall not be less than three years;

(3) for Class C certificates, the actual work experience shall not be less than one year.

(j) In addition to meeting the requirements of subsection (d) of this section, a fee must be paid before a certificate is issued. Applicants will be notified about when the fee is to be paid. The appropriate fee must be received by the executive director no later than three months after the date of billing, or the application will be considered invalid and must be repeated with re-examination. Fees are \$20 annually and the fee for the entire term of the certificate must be paid prior to issuance. A two-year certificate requires a fee of \$40, a three-year certificate requires a fee of \$60, a five-year certificate requires a fee of \$100, and an eight-year certificate requires a fee of \$160.

(k) Subject to revocation or suspension under §325.11 of this title (relating to Revocation or Suspension of Certificate), Class A certificates shall be valid for a term of eight years; Class B certificates shall be valid for a term of five years; Class C certificates shall be valid for a term of three years; and Class D certificates shall be valid for a term of two years. Certificates of competency for operators which were issued by the Texas Department of Health prior to August 15, 1985, will remain valid for the terms stated thereon.

(l) A certified wastewater treatment plant operator may perform all duties relating to the operation and maintenance of both wastewater treatment plants and collection systems and need not hold both types of certificates.

(m) Training used to meet the requirements of this section for obtaining or renewing wastewater certificates may be granted in areas of training other than those stated in subsections (g) and (h) of this section upon executive director approval of the training material. If the specific course and subject matter are approved, the executive director will determine the number of hours of credit that will be recognized for the course. The executive director shall review and approve the qualifications for all instructors of the training courses. Two hours of training credit will be recognized for verified attendance at the monthly Texas Water Utilities Association district meet-

ings. Training credit may also be satisfied by other professional activities, such as publication of articles and teaching training courses, upon approval of the executive director.

(n) Operators of domestic wastewater treatment facilities owned and located on industrial sites which are regulated by industrial-type wastewater disposal permits are required to be certified only if the point of discharge is separate from any other industrial outfalls and the domestic wastewater is not commingled with other industrial wastewater prior to discharge.

§325.3. Certificates for Collection System Operators.

(a) Any collection system operator as defined in §325.1 of this title (relating to Definitions) who does not hold a wastewater treatment plant operator certificate must hold a valid certificate of competency as a collection system operator issued pursuant to this chapter with the following exception. A person first entering the field of wastewater collection may be employed as an operator-in-training under constant supervision, without certification, for a maximum of one year after employment. This time period will allow the person to obtain the required designated training courses and take the appropriate examination. Any applicant who is unable to acquire current certification within one year of his or her employment is prohibited from performing any functions in the collection system other than minor maintenance work unless specifically authorized to do so by the commission. Upon suspension or revocation of a certificate under §325.11 of this title (relating to Revocation or Suspension of Certificate), the collection system operator shall no longer supervise a collection system maintenance crew if the operator determines remedial actions or makes operating decisions, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated.

(b) The certificates of competency for collection system operators shall be Class I and Class II. The qualification requirements for each class of certificate shall include a minimum level of formal education, a minimum level of training, a period of experience as a collection system operator, a grade of 70% or higher on a written examination for that certificate class, and the payment of the applicable fee. If the applicant fails to pass an examination, the applicant must wait a minimum of three months before taking any examination. The executive director may require additional training after a failed examination.

(c) The qualification requirements for each class of certificate for collection system operators are as follows:

Certificate	Education	Years Experience	Hours Training
Class II	High school Graduate and or equivalent**	2 and	60
Class I	High school Graduate and or equivalent or less than High school Graduate	0 and 0	and 40

**Diploma of General Educational Development (G.E.D.).

(d) Experience must be actual wastewater collection system experience and not experience which is non-operational in nature. Credit for experience not directly connected with collection system operation will be approved if the experience involves tasks that are similar to that required for operation of collection systems. Each year of related experience will count as only one-half year of experience.

(e) The hours of training which are required in subsection (c) of this section must be in approved courses which include, but are not limited to, the following or their equivalents:

(1) Class II--basic wastewater operations, wastewater collection, and either water utility safety, pump and motor maintenance, or wastewater treatment;

(2) Class I--basic wastewater operation (plus wastewater collection for 40 hour requirement).

(f) When applying at the Class II level, a collection system operator may substitute one year of college (32 semester hours approved by the executive director) or an additional 40 hours of wastewater training credits approved by the executive director for one year of the experience requirement.

(g) In addition to meeting the requirements of subsection (c) of this section, a fee must be paid before a certificate is issued. Applicants will be notified about when the fee is to be paid. The appropriate fee must be received by the executive direc-

tor no later than three months after the date of billing, or the application will be considered invalid and must be repeated with re-examination. Fees are \$20 annually and the fee for the entire term of the certificate must be paid prior to issuance. A two-year certificate requires a fee of \$40, and a three-year certificate requires a fee of \$60.

(h) Subject to revocation or suspension under §325.11 of this title (relating to Revocation or Suspension of Certificate), Class II certificates shall be valid for a term of three years; and Class I certificates shall be valid for a term of two years.

(i) Ordinarily, collection systems are considered as a part of the treatment works and are under the operation and supervision of certified wastewater treatment plant personnel; however, in those instances where an entity does not own the treatment facility treating its wastewater and the wastewater is routed elsewhere for treatment or the responsibility for operation and maintenance of the collection system is distinctly separated from the wastewater treatment facility, the operators in the collection system may be certified solely as collection system operators and not required to be certified as wastewater treatment plant operators. In those cases, the collection system shall be classified as Category I if it transports daily average flows of less than 100,000 gpd, and as Category II if it transports daily average flows of 100,000 gpd or greater.

(j) Each classified wastewater collection system shall have at least one opera-

tor who holds a certification commensurate with that category of system. Each Category I system shall have at least one operator with a Class I or Class II certificate. Each Category II system shall have at least one operator with a Class II certificate.

(k) A certified collection system operator may perform only those duties relating to the operation and maintenance of collection systems. Experience exclusively in collection system operation and maintenance is not applicable towards certification as a treatment plant operator.

(l) Training used to meet the requirements for obtaining or renewing collection system operator certificates may be granted in areas of training other than those stated in subsection (e) of this section upon executive director approval of the training material. If the specific course and subject are approved, the executive director will determine the number of hours of credit that will be recognized for the course. The executive director shall review and approve the qualifications for all instructors of the training courses. Two hours of training credit will be recognized for verified attendance at the monthly Texas Water Utilities Association district meetings.

§325.A. (Effective beginning January 1, 1990)

(a) Classification of Wastewater Treatment Facilities. Wastewater treatment facilities shall be classified in accordance with the following criteria:

<u>Treatment System</u>	<u>Permitted Daily Average Flow</u>	<u>Category</u>
No Discharge Treatment Systems	All Flows	D*
Pond Systems	1.0 MGD or less	D*
Preceded by Imhoff Tanks, Primary Clarifiers, or Facultative Lagoons	Greater than 1.0 MGD	C
Activated Sludge (Extended Aeration Mode) and Oxidation Ditch Systems	0.10 MGD or less	D*
	Greater than 0.10 MGD to 1.0 MGD	C
	Greater than 1.0 MGD to 5.0 MGD	B
	Greater than 5.0 MGD	A
Activated Sludge (Modes other than Extended Aeration)	0.050 MGD or less	D*
	Greater than 0.050 MGD to 0.50 MGD	C
	Greater than 0.50 MGD to 5.0 MGD	B
	Greater than 5.0 MGD	A
Trickling Filter, Rotating Biological Contactor, or other	0.50 MGD or less	D*
	Greater than 0.50 MGD to 2.0 MGD	C

Fixed Film Processes

Greater than 2.0 MGD to

B

10.0 MGD

Greater than 10.0 MGD

A

*As shown in Category D, wastewater treatment facilities shall be reclassified as Category C facilities if any of the following conditions exist:

- (1) Any Category D facility incorporating anaerobic sludge digestion. (Imhoff tanks with sludge drawn off to drying beds are not considered anaerobic digestors as far as this requirement is concerned.)
- (2) Any Category D facility whose permit requires nutrient reduction.
- (3) Any Category D facility whose permit requires the final effluent to meet a daily average BOD₅ or TSS concentration less than 10 mg/l.

(b) A wastewater treatment facility having a combination of treatment processes which are in different categories shall be assigned the higher category.

(c) The executive director may increase the treatment facility classification that is indicated in subsection (a) of this section for those facilities which in the judgment of the executive director include unusually complex processes or which present unusual operation or maintenance conditions.

(d) The chief operator or operator in responsible charge of each wastewater treatment facility shall possess a certificate at least as high as that of the category of treatment facility.

(1) Category D facilities shall be operated by a Class D operator or an operator certified at a higher level.

(2) Category C facilities shall be

operated by a Class C operator or an operator certified at a higher level.

(3) Category B facilities shall be operated by a Class B operator or an operator certified at a higher level.

(4) Category A facilities shall be operated by a Class A operator.

(e) Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the chief operator must be supervised by an operator who is certified at not less than one level below the category of the plant.

§325.5. Application.

(a) Applications for certificates of competency for wastewater treatment plant and collection system operators shall be made to the executive director, who is authorized by the commission to issue the

certificates of competency for the commission. Applications shall be completed in full, and the applicant shall be notified of any deficiencies by the executive director. All deficiencies shall be corrected within 60 days of notification, or the application and examination will be considered invalid and must be repeated.

(b) No certificates of competency will be issued by the executive director until all requirements have been met.

§325.6. Renewal of Operator Certificates.

(a) Unless revoked under §325.11 of this title (relating to Revocation or Suspension of Certificate), or replaced by a higher class of certificate, certificates may be renewed by payment of the applicable fee and either by taking and passing a renewal examination or by receiving a specified number of hours of approved additional training. When renewing by training

hours, applications for renewal and appropriate fees must be received by the executive director no later than 30 days after the date of expiration of the certificate, or the certificate will be renewable only by re-examination.

(b) To renew a certificate on the basis of training hours under subsection (a) of this section, the operator must earn the following number of credit hours for the applicable class of certificate: Class A - 80 hours; Class B - 50 hours; Class C - 30 hours; [and] Class D - 20 hours (if high school graduate or equivalent) or 40 hours (if less than a high school graduate);[.] Class II - 30 hours; and Class I - 20 hours (if high school graduate or equivalent) or 40 hours (if less than a high school graduate). The training hours to be counted toward certificate renewals are those which were received from the date the certificate was first issued (if it is the first renewal) or from the date of the certificate's latest renewal.

(c) Class D certificates are not renewable at any activated sludge type facilities, or at trickling filter or RBC facilities, and the facility has a permitted daily average flow of 100,000 gallons per day or greater.

(d)(c) If the applicant fails to pass the renewal examination with a grade of at

least 70%, the applicant must wait a minimum of three months before retaking any [the] renewal examination. To renew a certificate that has been expired for a period of one year or more, the applicant must satisfy the current requirements for training, education, experience, and fees, in addition to taking and passing a renewal examination. [If the existing certificate expires during the three-month waiting period, the applicant must reapply for a certificate as if applying for a new certificate for the first time.]

(e)(d) Holders of a certificate of competency must notify the executive director of any change in address or employment within 10 days from the date the change occurs.

(f)(e) Fees for renewal of certificates must be paid prior to renewal of the certificate, but need not be paid before any applicable educational requirements are met. Fees are \$20 annually and the fee for the entire term of the certificate must be paid prior to renewal. A two-year certificate requires a fee of \$40, a three-year certificate requires a fee of \$60, a five-year certificate requires a fee of \$100, and an eight-year certificate requires a fee of \$160.

(g) When the certificate of an operator expires while he or she is in full-time military service, the certificate may

be renewed without examination upon:

- (1) proof of military service;
- (2) proof of a previously held certificate; and
- (3) payment of appropriate fee.

§325.7. Certificates for Wastewater Treatment Facility Operations Companies. Every wastewater treatment facility operations company must hold a valid certificate of competency issued under the direction of the commission. [After January 1, 1987, no] No wastewater treatment facility operations company may operate a wastewater treatment facility without a certificate of competency. Any operator employed by a wastewater treatment facility operations company must hold a valid certificate of competency issued pursuant to this chapter. Upon revocation or suspension of a certificate under §325.11 of this title (relating to Revocation or Suspension of Certificate), the wastewater treatment facility operations company shall no longer operate or assist in operation of any wastewater treatment plant, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated. Prior to issuance or renewal of an operations company's certificate, a fee shall be paid as follows based on the number of facilities served:

<u>Number of Facilities Served</u>	<u>Fee*</u>
less than 5	\$ 75
5 - 9	\$150
10 - 19	\$250
20 or more	\$400

*Fees will cover the two-year period of the certificate.

§325.9. Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies.

(a) Every [All] wastewater treatment facility operations company [companies] must submit a report to the executive director within one year and 30 days after issuance or renewal of its [their] certificate, listing every wastewater treatment facility operated by the company during the preceding calendar year as well as the present year. The report shall [will] include, as a minimum, the name and location of the treatment facility, the permittee's name and address, the commission permit number for the facility, and the dates that the facility was operated by the company during the reporting year (e.g., January 1 - December 31). The report must also include, as a

minimum, a roster of all certified operators employed by the operations company listing the employees' names, home addresses, classes of certificates, and certificate numbers, at which treatment facilities (by commission permit number) each employee works or has worked, and which employees are head operators or supervisors and for which treatment facilities (by commission permit number). The executive director may specify additional information to be included in the report.

- (b) (No change.)
- (c) If an operations company ceases its operations, or if it is sold or reorganized such that control of the operations of the company is transferred from one person to another, the opera-

tions company certificate shall be automatically revoked. In the latter case, the newly organized company shall apply for a new certificate. Operations company certificates are not transferable.

§325.10. Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies.

- (a)-(b) (No change.)
- (c) Any person who wishes to contest an executive director's determination under subsection (b) of this section that the reason(s) for requesting a hearing is without merit may file his or her [their] request with the commission accompanied by notice to the executive director and the public interest advocate.

§325.11. Revocation or Suspension of Certificate.

(a) (No change.)

(b) The holder of a certificate of competency is not subject to revocation or suspension of the certificate of competency under subsection (a) of this section if:

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

(c) A certificate of competency [generally] shall [may] be suspended for a period of [up to] one year; [.] however, depending upon the seriousness of the offense(s), the time of suspension may be decreased or increased. A certificate is revoked automatically upon a second suspension. At the request of the certificate holder, or for good cause shown, the certificate may be suspended indefinitely by the commission.

(d) (No change.)

§325.12. Notice of Hearings.

(a) (No change.)

(b) Transmittal of the notice will be by certified mail, return receipt requested. Such notice shall be sufficient if mailed to the last known address supplied to the commission by the operator or company.

(c) Persons to be notified include, but are not limited to, the following: the applicant or certificate holder, the public interest advocates of the commission, the complainants (if any), and the permit holders of the wastewater treatment facilities at or for which the operator or company works or is employed [which would be affected by the cancellation of the certificate of competency, and any other persons who may be affected by the outcome of the hearing].

§325.15. Perpetual Certificates of Competency. Perpetual certificates of competency issued by the Texas Department of Health prior to September 1, 1985, will be exempt from the certification renewal requirements of this chapter, unless revoked pursuant to §325.11 of this title (relating to Revocation or Suspension of Certificate). Upon application by an operator and verification of records, an operator who has maintained a valid certificate of competency for 30 years shall retain the certificate in perpetuity.

§325.16. Nonrenewal of Certificate of Competency Due to Loan Default.

(a) (Effective beginning September 1, 1991) The Texas Water Commission shall not renew the certificate of a person whose name is on the list of persons in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation un-

less:

(1) the renewal is the first renewal following the commission's receipt of the list including the licensee's name among those in default; or

(2) the licensee presents to the commission a certificate issued by the corporation certifying that:

(A) the licensee has entered a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation.

(b) Defaulting on a repayment agreement may also be grounds for nonrenewal of a certificate of competency.

(c) The Texas Water Commission shall provide an opportunity for a hearing to the licensee before the commission takes action concerning the nonrenewal of the certificate of competency.

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

Issued in Austin, Texas on August 21, 1989.

TRD-8907625

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-8087

TITLE 31. NATURAL RESOURCES CODE

Part X. Texas Water Development Board

Chapter 355. Research and Planning Fund

Water Research

• 31 TAC §355.61

(Editor's Note: The Texas Water Development Board proposes for permanent adoption the new section in an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Texas Water Development Board (board) proposes new §355.61, concerning the adoption by reference of a memorandum of understanding (MOU) between the board and the Texas State Soil and Water Conservation Board. The memorandum is being adopted to allow the board to make a grant to the Soil and Water Conservation Board from the board's research and planning fund. The Soil and Water Conservation Board would use the grant to study the physical conditions

of the watersheds of the state that affect surface and underground water quality and quantity, to determine corrective measures, and to report recommendations to the 72nd Texas Legislature, as specified in appropriations riders for the board and the Soil and Water Conservation Board.

Susan Taylor, director of accounting, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Taylor also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be the performance of a study on the effects of the physical conditions of the watersheds of the state on water quality and quantity. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Suzanne Schwartz, General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-2321. Comments will be received for 30 days following publication.

The new section is proposed under the Texas Water Code, §6.104, which allows the board to enter into memoranda of understanding with other state agencies, and requires the board to adopt such memoranda by rule; and pursuant to the Texas Water Code, §6.101, which gives the board the authority to adopt rules necessary to carry out its powers and duties.

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

Issued in Austin, Texas on August 17, 1989.

TRD-8907554

Suzanne Schwartz
General Counsel
Texas Water Development Board

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For further information, please call: (512) 463-7961

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration
Subchapter O. State Sales and Use Tax

• 34 TAC §3.288

The Comptroller of Public Accounts proposes an amendment to §3.288, concerning direct payment procedures and qualifications. House Bill 2475 has reinstated the exclusion for taxable items that are held for shipment

outside Texas and taxable items that will be processed, fabricated, manufactured, or attached to other property and shipped outside Texas.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.288. Direct Payment Procedures and Qualifications.

(a)-(h) (No change.)

(i) If storage facilities are maintained containing taxable items purchased under a direct payment exemption certificate which may or may not be removed from the state and at the time of storage [both in Texas and outside the state, tax must be accrued and paid on the inventory at the time of purchase. However, a tax-free inventory of out-of-state purchases may be kept if separate records are maintained on the out-of-state purchases and] it is not known whether the taxable items [purchased outside the state] will be used in Texas, then the taxpayer may elect to report the use tax either [A taxpayer maintaining a tax-free inventory should report tax] when the taxable items are first stored in Texas or are first removed from inventory for use in Texas, as long as use tax is reported in a consistent manner. Use tax is not applicable to purchases of taxable items that are to be transported outside Texas for use solely outside Texas or on purchases of taxable items that are to be processed, fabricated, or manufactured into other property or attached or incorporated into other property and then transported outside Texas for use solely outside Texas. See §3.325 of this title (relating to Refunds and Payments Under Protest) and §3.338 of this title (relating to Allowance of Credit for Tax Paid to Suppliers) for refund and credit provisions. See also §3.346 of this title (relating to Use Tax).

(j)-(l) (No change.)

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

Issued in Austin, Texas, on August 21, 1989.

TRD-8807810

Bob Mulick
Comptroller
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.293

The Comptroller of Public Accounts proposes an amendment to §3.293, concerning food; food products; meals; food services. Recent legislative changes amended §151.314 and added §151.305 to the Tax Code, which exempts food, gum, candy, and toys for children when sold for \$.25 or less from a bulk vending machine.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be from bringing the section regarding sales tax on purchases of food, gum, candy, and toys from bulk vending machines and food sold by a mobile vendor, into conformity with the law. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.293. Food; Food Products; Meals; Food Services.

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

(1) (No change.)

(2) Bulk vending machine—A coin-operated device that contains unsorted items and randomly dispenses goods in approximately equal amounts without selection of a particular item or type of item by the customer.

(3)(2) Candy-Confections

such as candy bars, chewing gum, or candy kisses, but does not include products used exclusively for cooking, such as chocolate bits.

(4)(3) Caterer—A person engaged in the business of preparing and serving meals, drinks, or other food products at locations designated by a customer.

(5)(4) Food—All edible products intended for humans which products are consumed for taste, aroma, or nutritional value.

(6)(5) Food products.

(A) Food products include items intended for human consumption. Examples include but are not limited to: cereal and cereal products, milk and milk products, including ice cream, oleomargarin, meat and meat products, poultry products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices, condiments and salt, sugar products, coffee and coffee substitutes, tea, cocoa and cocoa products, canned foods, or any combination of these.

(B) Food products do not include:

(i) alcoholic beverages, carbonated and noncarbonated packaged soft drinks, diluted juices, ice, candy, or medicines, tonics, vitamins, and medicinal preparations in any form. A substance will be treated as medicinal or as a tonic if the substance has no nutritional value, or the quantities of food elements in the substance are small and its contribution to any diet is small, or the substance has substantial nutritional value but the substance is marketed, labeled, and promoted to the public as being therapeutic; or

(ii) food ready for immediate consumption.

(7)(5) Mobile vendor—A person who sells food from a motor vehicle, push cart, or any other form of vehicle.

(8)(7) Food ready for immediate consumption.

(A) Food ready for immediate consumption means the type of food, beverages, or meals normally prepared, served, or sold by restaurants, [drug stores,] lunch counters, cafeterias, etc., which, when sold, require no further preparation prior to consumption.

(B) When food is sold by a retailer who provides eating facilities (tables, trays, chairs, benches, or booths), food "ready for immediate consumption" also includes:

(i) all food sold in a heated state;

(ii) all food sold in individual-size packages or portions when food handling facilities are available for customer use;

(iii) all food sold with eating utensils provided, including plates, knives, forks, spoons, glasses, cups, or straws;

(iv) all sandwiches ready for immediate consumption (examples of sandwiches ready for immediate consumption include most triangle-type sandwiches, whether or not refrigerated, such as ham, cheese, tuna, or chicken salad. An example of a sandwich not ready for immediate consumption would be a frozen sandwich or a sandwich with a frozen or a partially frozen filling);

(v) all individual ice cream sundries; for example: ice cream cones, ice cream sandwiches, dishes, bars, sticks, specialties, or the like; however, ice cream sundries when sold in prepackaged units containing six or more such items are not included;

(vi) all individual-sized portions of bakery products sold in quantities of five or less; and

(vii) all food sold in individual-sized packages or portions requiring no further processing before consumption, when more than 75% of the retailer's gross sales on an outlet-by-outlet basis consist of sales of nonfood items and/or food sold in a heated state, with utensils provided, or in the form of sandwiches or individual ice cream sundries.

(C) When food is sold by a retailer who does not provide eating facilities (tables, trays, chairs, benches, or booths), food ready for immediate consumption also includes:

(i) all food sold in a heated state, when the food is heated by the retailer rather than the customer;

(ii) all food sold with eating utensils provided, including plates, knives, forks, spoons, glasses, cups, or straws;

(iii) all sandwiches ready for immediate consumption (examples of sandwiches ready for immediate consumption include most triangle-type sandwiches, whether or not refrigerated, such as ham, cheese, tuna, or chicken salad. An example of a sandwich not ready for immediate consumption would be a frozen sandwich or a sandwich with a frozen or partially frozen filling); and

(iv) all individual ice cream sundries. For example: ice cream cones, ice cream sandwiches, dishes, bars, sticks, specialties, or the like; however, ice cream sundries sold in pre-packaged units containing six or more such items are not

included.

(9)(8) Retirement facility—A facility which provides permanent housing and residence to individuals, a majority of whom are 60 years of age or older.

(10)(9) Wedding consultant—A person who provides services other than or in addition to the preparation and serving of food at weddings. Such services may include sending invitations, providing floral arrangements, decorating, supervision, and clean-up.

(b) Taxable food sales. Tax is due on the sale of food, meals, and drinks:

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

(6) sold ready for immediate consumption by a mobile vendor;

(7)-(8) (No change.)

(c)-(f) (No change.)

(g) Food sales through vending machine.

(i) With the exceptions of soft drinks and candy, vending machine operators must report sales tax on 50% of the total gross receipts from sales of all food. No deduction will be allowed for spoilage, waste, or other loss of foods.

(2) Vending machine operators must pay sales tax on the total gross receipts from sales of soft drinks and candy except as provided in paragraph (3) of this subsection. Vending machine operators who include the tax in the sales price of food, soft drinks, and candy should refer to §3.328 of this title (relating to Optional Reporting Methods for Grocers and Other Vendors).

(3) No tax is due on the sale of food, gum, or candy for \$.25 or less from a bulk vending machine.

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

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

Issued in Austin, Texas on August 21, 1989.

TRD-8907618

CCB outlook
Comptroller of Public
Accounts

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For further information, please call: (512) 463-4004

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• 34 TAC §3.298

The Comptroller of Public Accounts proposes an amendment to §3.298, concerning amusement services. The amendment excludes cover charges from the sales tax imposed on the admission price of an amusement when the receipts are taxed under the Texas Alcoholic Beverage Commission Code, §202.02. This exemption beginning July 1, 1989, dis-

continue the taxing of the sales receipts under beginning October 1, 1989, entertainment services provided in a place that has been designated as a Recorded Texas Historic Landmark by the Texas Historical Commission are exempt from the sales tax imposed by this section as a result of a legislative change. This amendment also takes into account a 1989 legislative change providing for the creation of special purpose districts on a local option basis. In addition, a clarification is made on admissions to gambling ships that operate out of Texas ports.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.298. Amusement Services.

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

(1) Amusement services—Entertainment, recreation, sport, pastime, diversion, or enjoyment that is a pleasurable occupation of the senses. Amusement services and places offering amusement services include, but are not limited to, the following:

(A)-(E) (No change.)

(F) other:

(i) except as provided by subsection (e)(4) of this section, cover charges (for admission to night clubs, dance halls, discos, etc., providing dancing, music, or other entertainment);

(ii)-(vii) (No change.)

(G) (No change.)

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

(5) Sales price of an amusement service—The fee charged for admission to an

amusement, including a convenience fee, handling charge, service charge, or other amount over and above the amount that would be charged for an amusement admission at the ticket counter of the facility at which the amusement service will be rendered. Also included are dues, initiation fees, and other charges, assessments, and fees required for a special privilege, status, or membership classification in a private club or organization. Receipts subject to tax under the Texas Alcoholic Beverage Code, §202.02, are not included in the sales price of an amusement service.

(6)-(7) (No change.)

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

(a) Imposition of tax.

(1) Sales tax is due on the sale of an admission to an amusement service if the event or location of the service is within the State of Texas. Sales tax is also due on admissions to gambling ships that operate outside Texas waters if they depart from and return to Texas ports. Sales tax is not due on the sale of an admission to an amusement service if the event or location of the service is outside Texas.

(2)-(3) (No change.)

(4) Sales or use tax is not due on cover charges which are taxable under the Texas Alcoholic Beverage Code, §202.02.

(f) (No change.)

(g) Exemptions.

(1) Sales tax is not due on the sale of an amusement service if the service is provided exclusively [by]:

(A) by a nonprofit organization, corporation, or association if the proceeds do not go to the benefit of an individual, except as a part of the services of a purely public charity. Initiation and membership fees and other assessed fees charged by such a nonprofit organization, corporation, or association are not taxable. Examples would include: organizations, corporations, or associations recognized as nonprofit organizations under the Internal Revenue Code, §501(c), nonprofit country clubs, Kiwanis clubs, labor unions, and ex-students organizations;

(B) by a nonprofit corporation organized under the laws of this state for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions;

(C) by an educational, religious, law enforcement, or charitable association or organization as long as no part of the proceeds goes to the benefit of a private individual;

(D) by the State of Texas, a municipality, county, school district, special district, or other political subdivision of the State of Texas;

(E) by the United States; [or]

(F) in a place that is included in the National Register of Historic Places; or [a person in a National Historical District.]

(G) in a place that is designated as a Recorded Texas Historic Landmark by the Texas Historical Commission.

(2)-(7) (No change.)

(h) (No change.)

(i) Records. Every seller of admissions to amusement services is responsible for keeping accurate records of all sales and purchases. See §3.281 of this title (relating to Records Required; Information Required). Every seller of admissions to amusement services must hold a sales tax permit and must file reports as required by §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

(j) Local tax. City, county, transit authority, and special purpose district [and metropolitan transit authority/city transit department (MTA/CTD)] tax should be allocated to the city, county, transit authority, and/or special purpose district [and/or MTA/CTD] where the amusement event occurred.

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

Issued in Austin, Texas, on August 21, 1969.

TRD-6307611
Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1969

For further information, please call: (512) 463-4004

• 34 TAC §3.307

The Comptroller of Public Accounts proposes an amendment to §3.307, concerning florists. As a result of recent legislation, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales made by florists located both inside and outside these districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small

businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.307. Florists.

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

(g) City [sales tax], [and] county [sales tax if applicable], and/or special purpose district sales tax is due to the [city/county] city, county, and/or special purpose district of a florist taking an order for a taxable item. City [sales tax or], county, and/or special purpose district sales tax is not due to the city, county, and/or special purpose district [city, county] of an unrelated florist making delivery.

(h) If a florist has more than one place of business, city [sales tax], [and] county [sales tax if applicable], and/or special purpose district sales tax is due based on [upon] the city, county, and/or special purpose taxing district [city/county] where the place of business taking the order is located.

(i) City, [or] county, and /or special purpose district use tax is not due when a florist located outside a local taxing district [city/county] or instructs an unrelated florist to make delivery in a local taxing city, county, and/or special purpose taxing district [city, county]. City, [or] county, and/or special purpose taxing district use tax is not due on amounts received by Texas florists who make delivery in a local taxing city, county, and/or special purpose taxing district [city/county] at the instructions of an unrelated florist taking an order either outside the state or outside a local taxing city, county, and/or special purpose taxing district [city/county].

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

Issued in Austin, Texas on August 21, 1969.

TRD-6307612
Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1969

For further information, please call: (512) 463-4004

• 34 TAC §3.330

The Comptroller of Public Accounts proposes an amendment to §3.330, concerning data processing services. Recent legislative changes provide for certain special purpose districts to be created on a local option basis and funded by a sales tax. This amendment deals with sales of data processing services by vendors located both inside and outside those districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.330. Data Processing Services.

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

(g) Local taxes.

(1) For local sales tax purposes, city, [MTA, or] county, transit authority, and/or special purpose district sales taxes are due if the data processing service provider has only one place of business (the location where clients request service) within the boundaries of a local taxing entity. Local sales tax must be collected based upon the tax rate at that location, except that no MTA or CTD sales tax is due on services provided at a location outside the boundaries of the transit area. In the case of multiple locations, if an order for service is placed at one location but the service is provided at another location, the place of business from which the service is provided will determine to which local taxing entity [(city, MTA, or county)] the tax is allocated.

(2) For the purposes of the local use tax, if a place of business is outside the boundaries of a local taxing entity, the data processing service provider will be required to collect local use tax if the client is within the local taxing entity and the service provider has representation in the local taxing entity as outlined in §3.236 of this title (relating to Seller's and Purchaser's Re-

sponsibilities). Even if the service provider is not required to collect local use tax, this client is still liable for the tax if the service is performed or a benefit is derived from the service within the boundaries of a local taxing entity.

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

(h) (No change.)

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

Issued in Austin, Texas, on August 21, 1989.

TRD-8907818

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.333

The Comptroller of Public Accounts proposes an amendment to §3.333, concerning security services. As a result of recent legislation, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales of security services by vendors located both inside and outside those districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.333. Security Services.

(a)-(j) (No change.)

(k) Local taxes. Local sales and use taxes (city, county, transit authority, [MTA, and CTD] and special purpose district) apply to services in the same way as they apply to tangible personal property. Generally, service providers must collect

local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, MTA and CTD sales taxes do not apply to services provided outside the boundaries of the transit area. If the place of business is outside such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is responsible for collecting them. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §§3.374, 3.375, 3.424, and 3.425 of this title (relating to Imposition of Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax; Administration of Use Tax; Collection by Retailer; Imposition of Sales Tax; and Administration of Use Tax; Imposition and Collection).

(1) (No change.)

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

Issued in Austin, Texas on August 21, 1989.

TRD-8907815

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.336

The Comptroller of Public Accounts proposes an amendment to §3.336, concerning gold, silver, coins, and currency. Recent legislative changes added to the Tax Code, §151.336, exempting from sales tax the sale of gold, silver, or numismatic coins or of platinum, gold, or silver bullion when purchased in a single transaction totaling \$1,000 or more.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be from bringing the section, regarding sales tax on purchases of gold, silver, coins, and currency, into conformity with the law. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comp-

trailer with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.336. Gold, Silver, Coins, and Currency.

(a) Sales tax is due on the sale in Texas of gold, silver, or numismatic coins or gold, silver, or platinum bullion unless sold to a purchaser in a single transaction of \$1,000 or more. Sales tax is not due on the sale of official State of Texas coins produced under the State Purchasing and General Services Act, §11.05, when sold by a person under contract with the State Purchasing and General Services Commission. Sellers of gold, silver, platinum, or numismatic coins are required to hold a Texas sales or use tax permit and to collect sales tax on all taxable sales within the state. See §3.286 of this title (relating to Seller's and Purchaser's Responsibilities).

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

(d) Unless exempted as provided by subsection (a) of this section, sales [Sales] or use tax is due on the sale of coins and currency when sold above face value or without a face value. The face value of United States coins and currency must be subtracted from the sales price before the tax is computed. Tax must be collected on the total sales price of foreign coins and currency. The face value of foreign coins and currency may not be subtracted from the sales price. The exchange of foreign currency at face value is not a taxable transaction.

(e) The sales tax exemption on the sale of gold, silver, or numismatic coins or gold, silver, or platinum bullion in a single transaction of \$1,000 or more does not include jewelry or other items of adornment [At the time an item which was purchased in a single transaction for \$10,000 or more and previously exempted under the Texas Tax Code, §151.336(a), is transferred to a different owner, use tax is due from the original purchaser on the original purchase price. Section 151.336 was repealed in 1987 by the second called session of the Texas Legislature].

(f)-(g) (No change.)

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

Issued in Austin, Texas, on August 21, 1989.

TRD-8807820 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.342

The Comptroller of Public Accounts proposes an amendment to §3.342, concerning information services. As a result of recent legislative changes, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales of information services by vendors located both inside and outside those districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Merin Cherry, Assistant Director, Legal Services Division, P.O. Box 13628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.342. Information Services.

(a)-(g) (No change.)

(h) Service benefit location-multi-state customer.

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

(3) A multi-state customer purchasing information services for the benefit of both in-state and out-of-state locations is responsible for issuing to the information service provider [debt collector] an exemption certificate asserting a multi-state benefit, and for reporting and paying the tax on that portion of the charge for information which will benefit the Texas location. An information provider that accepts such a certificate in good faith is relieved of responsibility for collecting and remitting tax on transactions to which the certificate relates.

(4)-(5) (No change.)

(i) Local taxes.

(1) For local sales tax purposes, city, [MTA, or] county, transit authority, and special purpose district sales taxes are due if an information provider has only one place of business (the location where clients request service) within the boundaries of a local taxing entity. Local sales tax must be collected based on the tax rate at that location, except that no MTA or CTD sales tax

is due on services provided at a location outside the boundaries of the transit area. In the case of multiple locations, if an order for service is placed at one location but the service is provided at another location, the place of business from which the service is provided will determine to which local taxing entity [(city, MTA, or county)] the tax is allocated.

(2) If a place of business is outside the boundaries of a local taxing entity, the information provider will be required to collect local use tax if the client is within the local taxing entity and the information provider has representation in the local taxing entity as outlined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). Even if the information provider is not required to collect local use tax, the client is still liable for the tax if the service is performed or a benefit is derived from the service within the boundaries of a local taxing entity.

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

(j) (No change.)

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

Issued in Austin, Texas, on August 21, 1989.

TRD-8807807 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.343

The Comptroller of Public Accounts proposes an amendment to §3.343, concerning credit reporting services. As a result of recent legislation, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales of credit reporting services by vendors located both inside and outside those districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted

to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.343: Credit Reporting Services.

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

(g) Local tax.

(1) For local sales tax purposes, city, [MTA, or] county, transit authority, and special purpose district sales taxes are due if a provider of credit reports has only one place of business (the location where clients request service) within the boundaries of a local taxing entity. Local tax must be collected based upon the tax rate at that location, except that no MTA or CTD sales tax is due on services provided at a location outside the boundaries of the transit area. In the case of multiple locations, if an order for service placed at one location but the service is provided at another location, the place of business from which the service is provided will determine to which local taxing entity [(city, MTA, or county)] the tax is allocated.

(2) For the purposes of the local use tax, if a place of business is outside the boundaries of a local taxing entity, the service provider will be required to collect local use tax if the client is within the local taxing entity and the service provider has representation in the local taxing entity as outlined in §3.286 of this title (relating to Seller's and Purchaser's Responsibilities). Even if the service provider is not required to collect local use tax, the client is still liable for the tax if the service is performed or a benefit is derived from the service within the boundaries of a local taxing entity.

(h) (No change.)

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

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

Issued in Austin, Texas, on August 21, 1989.

TRD-880783

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.344

The Comptroller of Public Accounts proposes an amendment to §3.344, concerning tele-

communications services. As a result of recent legislative changes, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales of telecommunications services by vendors located both inside and outside those districts. In addition, facsimile (FAX) services are added to the list of examples of taxable services. This change is necessary because of the increased use of facsimile as a means of communication.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.344. Telecommunications Services.

(a) (No change.)

(b) Services taxable. Sales tax is due on a charge for the following:

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

(6) facsimile (FAX) services;

(7)(6) telegraph services which are both originated from and billed to a person within Texas;

(8)(7) a taxable service paid for by the insertion of coins or tokens into a coin-operated telephone;

(9)(8) sale, lease, or rental charges for telecommunication equipment including separately stated installation charges. Separately stated charges for labor to install wiring will not be taxable if the wiring is installed in new structures or residences in such a manner as to become a part of the realty. Separately stated charges for labor to install wiring in existing nonresidential real property are taxable. See §3.291 and §3.357 of this title (relating to Contractors; Real Property Repair and Remodeling) for additional information. If charges for wiring and equipment are not separated, the total charge will be treated as a sale and installation of tangible personal property;

(10)(9) installation of telecommunication services (service connection fee); and

(11)(10) private line services, including charges for related equipment. Taxable receipts include the channel termination charge imposed at each channel termination point within this state, the total channel mileage charges imposed between channel termination points or relay points within this state, and an apportionment of the interoffice channel mileage charge that crosses the state border. An apportionment on the basis of the ratio of the miles between the last channel termination point in Texas and the state border to the total miles between that channel termination point and the next channel termination point in the route will be accepted. Other methods may be used if first approved in writing by the comptroller.

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

(h) Local tax. City, county, transit authority, and special purpose district [Metropolitan Transit Authority (MTA), and city transit department (CTD)] tax on telecommunications services is allocated to the location from which the call originates. If the point of origin cannot be determined, the local tax is allocated to the address to which the call is billed. Local tax could not have been imposed on telecommunications services prior to October 1, 1987. See §3.372 and §3.422 of this title (relating to Requirements for Adopting or Abolishing City Tax; Requirements for Adopting or Abolishing MTA Tax) for information on how a city, county, transit [or] authority, or special purpose district may impose local tax on telecommunications services after October 1, 1987 (Note: The local sales tax exemptions on interstate long-distance telecommunications services may not be repealed).

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

Issued in Austin, Texas, on August 21, 1989.

TRD-880783

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.354

The Comptroller of Public Accounts proposes an amendment to §3.354, concerning debt collection services. As a result of recent legislative changes, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales of debt collection services by vendors located both inside and outside those districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.354. Debt Collection Services.

(a)-(g) (No change.)

(h) Local taxes.

(1) Local sales and use taxes (city, county, transit authority, and special purpose district (MTA, and CTD)) apply to services in the same way they apply to tangible personal property. Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, MTA and CTD sales taxes do not apply to services provided outside the boundaries of the transit area. In the case of multiple locations, if an order for service is placed at one location but the service is provided at another location, the place of business from which the service is provided will determine to which local taxing entity [(city, MTA, or county)] the tax is allocated. If the place of business is outside such a jurisdiction but service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is responsible for collecting them. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §§3.374, 3.375, 3.424, and 3.425 of this title (relating to Imposition of Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax; Administration of Use Tax; Collection by Retailer; Imposition of Sales Tax; Administration of Use Tax; Imposition and Collection).

(2)-(3) (No change.)

(i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas on August 21, 1989

TRD-8907817

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.355

The Comptroller of Public Accounts proposes an amendment to §3.355, concerning insurance services. As a result of recent legislation, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales of insurance services by vendors located both inside and outside those districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.355. Insurance Services.

(a)-(j) (No change.)

(k) Local tax. Local sales and use taxes (city, county, transit authority, and special purpose district (MTA, and CTD)) apply to services in the same way as they apply to tangible personal property. Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, MTA and CTD sales taxes do not apply to services provided outside the boundaries of the transit area. If the place of business is outside such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is responsible for collecting them. For information on the collection

and reporting responsibilities of providers and purchasers of taxable services, see §§3.374, 3.375, 3.424, and 3.425 of this title (relating to Imposition of Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax; Administration of Use Tax; Collection by Retailer; Imposition of Sales Tax; Administration of Use Tax; Imposition and Collection).

(1) (No change.)

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

Issued in Austin, Texas on August 21, 1989

TRD-8907814

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.356

The Comptroller of Public Accounts proposes an amendment to §3.356, concerning real property services. The amendment adds an exemption from the tax for landscaping and yard maintenance charges performed by individuals 65 years old or older who have total receipts for these services of \$5,000 or less for the four most recent quarters. A definition of temporary help services, which have been exempted from the tax, has been added. Subsection (k) has been amended to reflect the change in the application of local sales and use tax on garbage or solid waste removal services.

The additional exemptions take effect October 1, 1989. All were added by recent legislation.

A portion of subsection (j)(3) has also been revised to change the examples of unrelated services which may be excluded from the tax base and the examples of local taxes in subsection (k) have been reworded to allow for the possible future additions of "special purpose districts."

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.356. Real Property Services.

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

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

(5) Landscaping—The activity of arranging and modifying areas of land and natural scenery for aesthetic effect, considering the use to which the land is to be put. The term includes adding, removing, or arranging natural forms, features, and plantings, including vegetation, and other features to fulfill aesthetic or functional requirements. It includes the application of soil, soil additives, and amendments to prepare or maintain the planting area. Some examples are garden planting or maintenance, [lawn care,] arborist services, ornamental bush or shrub planting, tree planting, tree surgery pruning or spraying, and lawn sodding. The term does not include the addition of sprinkler systems, retaining walls, ponds, pools, or fences, or other construction activities or services provided by landscape designers or landscape architects such as consultation, research, preparation of general or specific design or detail plans, studies, specifications, or supervision, or any other professional services or functions within the definition of the practice of engineering or architecture. Landscaping services performed by landscape designers or landscape architects are taxable.

(6)-(8) (No change.)

(9) Temporary help service—A service provided by persons who supplement an existing work force on a temporary basis. The service provided must be one which is usually performed by the employer's regular employees and all supplies and equipment must be provided by the employer. The persons providing the temporary help service must be supervised by the employer.

(b) Responsibilities of persons providing real property services. With the exception of persons within the definition of "employee" (subsection (a)(2) of this section) and persons who provide temporary help services (subsection (a)(9) of this section), persons [Persons] providing those services defined in subsection (a) of this section are performing real property services. Persons performing real property services must obtain a tax permit and collect and remit sales tax on all charges for real property services.

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

(e) Landscaping and lawn maintenance provided by persons under 18 years

old or by persons 65 years old or older. Charges for performance of landscaping or yard maintenance (subsection (a)(5) and (6) [§3.357 and (2)] of this section) are exempt if performed by:

(1) a self-employed person under 18 years of age whose total receipts from providing landscaping or yard maintenance are \$1,000 or less during the preceding calendar quarter or the same calendar quarter of the preceding year; or

(2) an individual 65 years of age or older whose total receipts from providing landscaping or yard maintenance are \$5,000 or less for the four most recent quarters.

(f)-(h) (No change.)

(i) Unrelated services. A service will be considered as unrelated if:

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

(3) the performance of the unrelated service is distinct and identifiable. Examples of an unrelated service which may be excluded from the tax base include maintenance charges, engineering studies, and architectural designs (consultation, training, expedited filing charges, and maintenance charges) meeting the definition in §3.357 of this title (relating to Real Property Repairs and Remodeling);

(4)-(5) (No change.)

(j) (No change.)

(k) Local taxes. With the exception of garbage or other solid waste removal services, local [Local] sales and use taxes (city, county, transit authority, and special purpose district [MTA, and CTD]) apply to services in the same way as they apply to tangible personal property. Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, MTA and CTD sales taxes do not apply to services provided outside the boundaries of the transit area. If the place of business is outside such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is required to collect it. Local tax for garbage or other solid waste removal services is determined by the location of the garbage or other solid waste when its collection or removal begins. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §§3.374, 3.375, 3.424, and 3.425 of this title (relating to Imposition of the Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax, Administration of Use Tax; Collection by Retailer, Imposition of Sales Tax, and Administration of Use Tax; Imposition and Collection).

(l)-(m) (No change.)

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

Issued in Austin, Texas on August 21, 1989

TRD-887918

Etta Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 463-4004

• 34 TAC §3.357

The Comptroller of Public Accounts proposes an amendment to §3.357, concerning real property repair and remodeling. As a result of recent legislative changes, certain special purpose districts may be created on a local option basis and funded by a sales tax. This amendment deals with sales of real property repair and remodeling services by vendors located both inside and outside those districts.

Ben Lock, associate deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in providing them with new information regarding their tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 13628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.357. Real Property Repair and Remodeling.

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

(e) Local taxes. Local sales and use taxes (city, county, transit authority, and special purpose district [MTA, and CTD]) apply to services in the same way as they apply to tangible personal property. Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, MTA and CTD sales taxes do not apply to services provided outside the boundaries of the transit area. If the place of business is out-

side such a jurisdiction but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is required to collect it. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §§3.374, 3.375, 3.424, 3.425 of this title (relating to Imposition of the Sales Tax; Collection by Retailer; Bracket System Permits; Determining City Tax; Administration of Use Tax; Collection by Retailer; Imposition of Sales Tax; Administration of Use Tax; Imposition and Collection).

(f)-(g) (No change.)

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

Issued in Austin, Texas on August 21, 1989.

TRD-8807808

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1990

For further information, please call: (512) 463-4004

• 34 TAC §3.371

The Comptroller of Public Accounts proposes an amendment to §3.371, concerning effect of rules, permits and certificates; exclusion of sales of \$.09 or less. The amendment is necessary because of the disparity in local tax rates throughout the state.

Ben Lock, assistant deputy comptroller for fiscal management, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be providing new information regarding tax responsibilities under changes made by the legislature. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Martin Cherry, Assistant Director, Legal Services Division, P.O. Box 19628, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.371. Effect of Rules; Permits and Certificates; Exclusion of Certain Sales [of \$.09 or Less].

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

(c) Permits, exemption certificates, and resale certificates required for the state limited sales and use tax (hereafter referred to as state tax) shall satisfy the requirements of the City Act; no additional permit or certificate shall be required as a result of the City Act. See §3.285 of this title (relating to Resale Certificate; Sales for Resale; Resale Certificates), §3.286 of this title (relating to Seller's and Purchaser's Responsibilities), §3.287 of this title (relating to Exemption Certificates), and §3.288 of this title (relating to Direct Payment[,] procedures[,] and Qualifications).

(d) (No change.)

(e) Exclusion of sales for an amount on which no tax may be collected from the customer [of \$.09 or less] shall be as follows.

(1) Any retailer who can establish to the satisfaction of the comptroller that 50% or more of his total receipts from sales of taxable items arise from individual transactions in which the total sales price is an amount on which no tax may be collected [\$.09 or less] may exclude the receipts from such individual sales when reporting and paying the tax. No such reporting method shall be used unless the comptroller has given prior written approval to the retailer. Prior written approval may be obtained only by providing the comptroller with records which conclusively establish that 50% or more of the applicant's receipts are from sales in an amount on which no tax may be collected [of \$.09 or less]. If two or more items, each of which sells for an amount on which no tax may be collected [\$.09 or less], are sold together for a total sales price that requires tax to be collected [of more than \$.09], the receipts from such sales may not be treated as two separate sales and not taxed [of \$.09 or less].

(2) Every retailer desiring to use the method mentioned in paragraph (1) of this subsection must maintain adequate records, satisfactory to the comptroller, to support his eligibility. After the written approval of the comptroller is granted to any retailer to use the method, the retailer must maintain adequate records to support every report. If during any reporting period the retailer's records fail to establish the facts necessary to exclude sales in an amount on which no tax may be collected [of \$.09 or less], the tax for such period(s) must be reported and paid [at the rate of 1.0%] on all receipts from sales of taxable items, including sales of \$.09 or less.

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

Issued in Austin, Texas on August 21, 1989.

TRD-8807808

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: September 25, 1990

For further information, please call: (512) 463-4004

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 6. Disaster Assistance Program

Case Decision, Review, and Closing

• 40 TAC §6.303, §6.306

The Texas Department of Human Services (DHS) proposes amendments to §§6.303 and 6.306, concerning the right to request an appeal and supplemental grants. The amendments result from changes in federal regulations which specify assistance available through the Individual and Family Grant (IFG) Program.

Burton F. Relford, deputy commissioner for support operations, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Relford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of current IFG program eligibility criteria in DHS's Disaster Assistance Program rules. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rosenberg, Administrator, Policy Development Services Division-218, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-0030, within 30 days of publication in the Texas Register.

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

§6.303. Right to Request a Reconsideration and an Appeal. The applicant may request that the department reconsider a grant decision. The applicant is notified of the reconsideration decision by a letter. The letter notifying the applicant of the decision also informs him of the right to appeal the decision to the state coordinating officer. The state coordinating officer notifies the applicant of the appeal decision. The appeal decision is final unless the applicant decides to take the matter to court.

§6.306. Supplemental Grants. Applicants may be entitled to a supplemental grant if

the review and auditing process reveals that the initial grant amount has not adequately met the applicant's serious needs or necessary expenses. The total grant amount may not exceed the maximum grant allowed by federal law.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907571

Ronald L. Lindsey
Commissioner
Texas Department of
Human Services

Proposed date of adoption: November 1, 1989

For further information, please call: (512) 450-3785

Chapter 10. Family Self-support Services

Child Day Care Services

• 40 TAC §10.3102, §10.3155

The Texas Department of Human Services (DHS) proposes amendments to §10.3102 and §10.3155, concerning day care eligibility, in its Family Self-support Services (FSS) chapter. One of the purposes of the amendments is to allow DHS to purchase day care for the children of certain teen parents who need child care in order to complete high school or the equivalent. Some teen parents are currently ineligible to receive child care assistance under this section because either their own parent's income makes the teen ineligible or the teen's own parent(s) are not employed or in training.

The other purpose of the amendments is to provide day care services to siblings of children currently enrolled in Title XX day care in order to maintain the integrity of the family. Current enrollment policy gives no preference to siblings of children already enrolled in day care. All children must be enrolled according to the individual child's priority status at time of enrollment. In some instances, not all the children in an eligible family group can be enrolled in day care at the same time because of lack of available spaces or other reasons. By the time space is available, the family may have moved to a lower priority group and the siblings still cannot be enrolled because there is a long waiting list. This situation creates a burden in the parent, who must continually manage a number of separate day care arrangements for the children.

Burton F. Railford, deputy commissioner for support operations, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments or small businesses, as a result of enforcing or administering the section.

Mr. Railford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to enable teen parents to obtain day care for their children in order to allow the parents to obtain a high school degree or equivalent, and to reduce

the difficulties placed on parents required to enroll their children simultaneously in more than one day care service.

There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-471, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

§10.3102. Eligibility and Priorities for Service in POS Facilities.

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

(c) Through waiver procedures specified in §10.3135 of this title (relating to Waiver Requests for POS Facilities), the following exceptions may be granted for individual clients when circumstances warrant and funding allows.

(1) For the teen parent who needs child care in order to complete high school or the equivalent and is ineligible due to her parents' income, child care may be provided if the teen parent has no access to her parents' income or to any other comparable resources to pay for child care.

(2) For the teen parent who meets income eligibility guidelines and needs child care in order to complete high school or the equivalent but is ineligible because her own parent is not employed or in training, child care may be provided if the grandparent refuses to care for the child, or the home environment is not considered suitable for the care of the child.

(d)(c) Contractors must enroll children in order of priority except when an eligible sibling lives in the same household of a child currently enrolled in DHS paid day care. In this instance, the sibling may be given preference for enrollment over other children, regardless of the sibling's current priority status.

(e)(d) Once enrolled, children may receive day care as long as they are eligible and meet one of the priorities. A child in Priority 1 may receive day care for up to six months unless a continuation is authorized by DHS based on the child's need for care.

§10.3155. Eligibility and Priorities For Service in Provider Agreement Facilities.

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

(c) Teen parents receiving AFDC who are ineligible to receive child care because their own parents are not em-

ployed or in training may receive day care in order to complete high school or the equivalent. In these instances, the grandparents must refuse to care for the children or their home environments must be considered unsuitable for the care of the children. These exceptions may be granted through waiver procedures stated in §10.3179 of this title (relating to Waiver Requests for Provider Agreement Facilities).

(d)(c) Providers must enroll children in order of priority.

(e)(d) Children must be in Priority 1 or 2 or be an eligible sibling of a child currently enrolled in DHS paid day care and living in the same household when initially referred to a provider agreement facility by a DHS worker. An eligible sibling will be given preference for enrollment over other children regardless of the eligible sibling's current priority status. Children in Priority 1 may receive day care for six months, unless child protective services staff authorizes continued care. Children in Priority 2 may receive day care while they or their parents or caretakers receive an assistance grant and the parents or caretakers are employed or participating in training. Children may continue receiving day care for up to two years after grant denial under Priorities 3 or 4 if they are still eligible and their parents or caretakers are employed or participating in training.

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

Issued in Austin, Texas, on August 21, 1989.

TRD-8907604

Ronald L. Lindsey
Commissioner
Texas Department of
Human Services

Proposed date of adoption: November 1, 1989

For further information, please call: (512) 450-3785.

Part IV. Texas Commission for the Blind

Chapter 169. Visually Handicapped Children's Program

• 40 TAC §§169.3-169.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the office of the Texas Commission for the Blind or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Commission for the Blind proposes the repeal of §§169.3-169.6, concerning eligibility for services, determination of economic need, and services not requiring application of economic need criteria. New

sections are being concurrently proposed which establishes the client's economic need relative to the federal poverty level. This section on definitions is also being rewritten to include some definitions previously omitted. It is also the intent of the agency to rename this chapter "Blind and Visually Impaired Children's Program" to conform to accepted terminology.

Michael T. Phillips, deputy director of administration and finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Pat D. Westbrook, executive director, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer definition of the criteria by which the commission determines the client's economic status and by which the agency determines whether or not it may purchase certain services for the client. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat D. Westbrook, Executive Director, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The requests are proposed under the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to provide services to visually handicapped children to supplement the services provided by other state agencies if the commission determines that the provision of the services is appropriate and adopt rules governing services.

§169.3. Definitions.

§169.4. Eligibility for Services.

§169.5. Services Not Requiring Application of Economic Need Criteria.

§169.6. Economic Need Criteria.

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

Issued in Austin, Texas on August 15, 1989.

TRD-8907498

Pat D. Westbrook
Executive Director
Texas Commission for the
Blind

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 499-2800

• 40 TAC §169.3-169.6

The Texas Commission for the Blind proposes new §§169.3-169.6, concerning eligibility criteria, guidelines for establishing the client's economic need relative to the federal poverty level, and a list of services which

require application of economic need prior to determining the commission's level of financial participation in services. A new section on definitions includes the definition of monthly income and defines the poverty level used by the agency in determining economic need. The agency also intends to rename the chapter "Blind and Visually Impaired Children's Program" to conform to today's preferred terminology.

Michael T. Phillips, deputy director of administration and finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Pat D. Westbrook, executive director, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer definition of the criteria by which the commission determines the client's economic status and by which the agency determines whether or not it may purchase certain services for the client. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat D. Westbrook, Executive Director, Texas Commission for the Blind, P.O. Box 12866, Austin, Texas 78711.

The new sections are proposed under the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to provide services to visually handicapped children to supplement the services provided by other state agencies if the commission determines that the provision of the services is appropriate.

§169.3. Definitions.

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

Authorization—Written approval to authorize a service provider to perform or provide a certain service.

BVIC Program—Blind and Visually Impaired Children's Program (formerly referred to as the Visually Handicapped Children's Program).

Caseworker—An employee of the commission designated to provide services to the referral or client.

Child/parent—Used interchangeably as child/family, client/parent, or client/family or otherwise as applicable to the context; means that the child is considered a part of a whole family unit in considering certain requirements which are contingent upon the family.

Client—An individual who has been determined eligible for services.

Commission—The Texas Commission for the Blind.

Economic need criteria—The criteria by which the commission determines the client/family's economic status and by which the caseworker determines whether or not the commission may purchase the necessary services.

Eligibility for services—The determination that the referral has met the criteria of the commission and services may be provided under the rules set forth in this chapter.

Family of referral/client—The parents and/or legal guardian and all individuals residing in the household for whom the parents and/or legal guardian have legal and/or financial responsibility.

Federal poverty level—The amount of income, depending on family size, that the United States Department of Health and Human Services determines to be the level of income below which a family is classified as being in poverty.

Monthly income—Any compensation available to the family and includes, but is not limited to the following:

(A) wages or salary, defined as the pay of an individual before deductions for:

- (i) income tax;
- (ii) social security tax;
- (iii) one qualified retirement program;
- (iv) health insurance premiums; and
- (v) trade or professional dues and assessments;

(B) contributions from family, individuals, or interested organizations on a regular basis;

(C) child support payments;

(D) net rentals from property;

(E) scholarships/fellowships;

(F) public assistance payments (including SSI and AFDC);

(G) assistance from private welfare agencies;

(H) income from stock dividends and bond interest; and

(I) any available pension, compensation, or insurance, including:

- (i) SSDI;
- (ii) health/hospitalization insurance plans;
- (iii) workmen's compensation;
- (iv) veteran's benefits;
- (v) Old Age and Survivors Insurance (OASI) from the Social Se-

curity Administration;

- (vi) labor union insurance and/or health and welfare benefits; and
- (vii) unemployment compensation;

(J) participation in savings plans and deductions for savings bonds; and

(K) income from self-employment which is defined as gross receipts, minus allowable Internal Revenue Service expenses, from one's own business which results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include:

- (i) cost of goods purchased;
- (ii) rent;
- (iii) utilities;
- (iv) wages and salaries paid; and

(v) business taxes (not personal income taxes or self-employment social security taxes).

Permanent severe visual loss—Visual acuity or functional loss of 20/70 or worse in the better eye with best correction, or a field restriction of 20 degrees.

Referral—An individual who has been referred to the Blind and Visually Impaired Children's Program for services.

Rehabilitation services—Services designed to assist the visually impaired child to develop potential for independent living; used interchangeably with habilitative services.

Transportation services—Travel, food, and lodging necessary to the provision of rehabilitation services.

Visual impairment—A condition of the visual system that is outside normal limits and negatively affects the current or potential functioning of the child.

§169.4. Eligibility for Services.

(a) The commission is solely responsible for determining the eligibility of an individual for services. Criteria for eligibility are:

(1) **Residence.** The child and his or her parent(s) or guardian(s) must be living in Texas.

(2) **Age.**

(A) All new referrals must be between the ages of 0-15 years;

(B) Referrals age 16-21 must have a permanent severe visual loss or functional loss of 20/70 or worse in the better eye with best correction, or a field restriction of at least 20 degrees.

(3) **Visual impairment.** There must be a visual impairment.

(b) **Economic need and similar benefits** determine the commission's level of financial participation in services.

§169.5. Economic Need.

(a) Economic need of the family of the referral or client will be determined prior to purchase of all services not listed in §169.6 of this title (relating to Services Not Requiring Application of Economic Need Criteria).

(b) Economic need will be determined by the size and monthly income of the family relative to a certain percentage of the federal poverty level. The percentage of the federal poverty level at which the agency is operating is dependent on the funds available to the commission and is available to the public by calling or writing any of its local offices or the commissioner's state office at P. O. Box 12866, Austin, Texas 78711.

(c) The following items may be deducted prior to establishing the monthly income of the family and the presence of hardship on the family:

(1) prescribed diets and medications used by the client or family members;

(2) obligations imposed by a court order; and

(3) medical costs and debts resulting from a permanent disability or chronic illness of the client or family member.

(d) Monthly income will be determined at application for services and will be based on the preceding month. Updated income will be obtained at least annually, or when family size or employment changes, or in other circumstances as may be deemed by the caseworker.

(e) There may be circumstances where the preceding month's income does not accurately reflect the family's economic status, e.g., a recent job loss or employment after a long period of unemployment. In cases such as these, the average monthly income of the preceding 12 months may be used.

§169.6. Services Not Requiring Application of Economic Need Criteria.

(a) A child who is visually impaired may receive counseling and guidance without regard to economic need.

(b) A client with a permanent severe visual loss may receive the following services without regard to economic need:

- (1) counseling and guidance;
- (2) educational support services;
- (3) skills development services;

(4) skills development equipment up to a maximum of \$500; and

(5) nonmedical diagnostic evaluations.

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

Issued in Austin, Texas on August 15, 1989.

THD-8807487

Pat D. Westbrook
Executive Director
Texas Commission for the
Blind

Earliest possible date of adoption: September 25, 1989

For further information, please call: (512) 469-2900

Part VI. Texas Commission for the Deaf

Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification

Subchapter E. Recertification Procedures

• 40 TAC §183.75

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the office of the Texas Commission for the Deaf or in the Texas Register office, Room 345, James Earl Rudder Building, 1019 Brasse Street, Austin.)

The Texas Commission for the Deaf (TCD) proposes the repeal of §183.75, concerning the Board for Evaluation of Interpreters (BEI) recertification. The repealed section would be replaced by a new section which is proposed and published elsewhere in this issue. The repeal is proposed to clarify the recertification procedures for certified interpreters.

Larry D. Evans, TCD executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government or small business as a result of enforcing or administering the repeal.

Mr. Evans also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to clarify for the public the recertification procedure for the certified interpreters. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to William F. Eckstein, Coordinator of Administrative Procedures Services, P.O. Box 12804, Austin, Texas 78711.

The repeal is proposed under the Human Resources Code, §§1.006(b)(3) and §81.007(g), which provide the Texas Commission for the Deaf with the authority to promulgate necessary rules for the BEI certification and recertification program.

§183.75. Recertification Process.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907867

Larry D. Evans
Executive Director
Texas Commission for the
Deaf

Proposed date of adoption: October 12, 1989

For further information, please call: (512) 469-6166

The Texas Commission for the Deaf (TCD) proposes new §183.75, concerning board for evaluation of interpreters (BEI) recertification process. The new section is proposed to clarify minimum recertification requirements in which TCD certified interpreters are required to validate and maintain their certificate after the conclusion of the last five-year certification period.

Larry D. Evans, TCD executive director, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications as for state or local government or small business as a result of enforcing or administering the amendment.

Mr. Evans also has determined that for each year of the first five year period the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be the assurance of continued quality of interpreter services by the commission through the BEI certification program. Only persons who are either certified interpreters here or are seeking interpreter certification here will be affected upon yearly validation and maintenance of their certificates. The anticipated economic cost to those individuals who are required to comply with the section as proposed will be fees of \$30 to \$40 for recertification applications, depending on certification levels.

Comments on the proposal may be submitted to William F. Eckstein, Coordinator of Administrative Procedures/Services, P.O. Box 12904, Austin, Texas 78711.

The new section is proposed under the Human Resources Code, §§1906(b)(2) and §81.007, which provides the Texas Commission for the Deaf with the authority to promulgate necessary rules for BEI operations and interpreter certification program.

§183.75. Recertification Procedures. The Texas Commission for the Deaf interpreter certificates shall be valid for a five-year period provided maintenance requirements are met. At least 90 days prior to the conclusion of the five-year period, the certificate holder shall be notified by mail of termination date of certificate. Within 30 days after the termination date of certificate, the certificate holder must meet the requirements for recertification. The TCD certification awarded through recertification shall be valid for a five-year period, provided maintenance requirements are met. The board has established the following evaluation and experience requirements and procedures for recertification.

(1) Application. The certificate holder shall submit either an application for evaluation or application for recertification and the appropriate fees.

(2) Evaluation. A certificate holder applying for recertification by direct evaluation of skills or whose certificate has been reciprocated by the commission and the reciprocating certificate has expired, or who holds a Level I certificate which has expired, must take an evaluation within one year of recertification application date. The tests for Level I, Level III, Level IV, or Level V will be given to the applicant requesting a specific level of test and will be administered and scored by the board. The applicant will not be permitted to take a test given by the board at a lesser level than the applicant's current certificate level. The applicant may receive certification at the appropriate level depending upon test performance results.

(3) Experience requirements. In lieu of evaluation for recertification, a certificate holder who is certified at Level II, Level III, Level IV, or Level V shall submit to the board documentation or evidence of both subparagraphs (A) and (B) of this paragraph which indicates professional activity and education within the last five-year certification period. The applicant may receive certification at the appropriate certification level depending upon review of paperwork submitted and approved by the board.

(A) The applicant shall select one of the following:

(i) documentation of service for two or more years on the board of or employed by an organization or agency dealing with some aspect of deafness; or

(ii) documentation of one-year employment in the profession of interpreting; or

(iii) documentation showing services as an evaluator for the BEI, RID, or TSID on eight different evaluation assignments.

(B) The applicant shall select one of the following:

(i) completion of at least 1.0 CEU or the equivalent to 10 hours of workshops or training for Level II and Level III; or 2.0 CEUs or the equivalent to 20 hours of workshops, training, or instruction for Level IV and Level V in any professional or disciplinary training that is related to professional ethics, field of interpreting, and standards of practice; or

(ii) completion of the equivalent of three credit hours in college courses or instruction for Level II and Level III; or six credit hours in college courses for Level IV and Level V in any professional or disciplinary training that is related to professional ethics, field of interpreting, and standards of practice.

(4) Retroactive approval. Recertification applications which are submitted after September 1, 1987 will be allowed to recertify under §183.75 of this title (relating to Recertification Procedures) and will be retroactively approved upon receipt of application, fees, and required paperwork for consideration of recertification awards. The allowance for retroactive approval will expire November 1, 1989.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-8907868

Larry D. Evans
Executive Director
Texas Commission for the
Deaf

Proposed date of adoption: October 12, 1989

For further information, please call: (512) 469-9891

Adopted Sections

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

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Definitions

• 7 TAC §91.1

The Credit Union Department adopts an amendment to §91.1, with changes to the proposed text as published in the July 11, 1989, issue of the *Texas Register* (14 TexReg 3932).

The amendment is adopted because individuals who are referring to the Credit Union Department rules must clearly understand all terms contained therein in order to correctly interpret the requirements of the rules.

If an individual is referring to a section and he encounters a term with which he is not familiar, that individual can clarify its meaning by using this section containing definitions of such terms.

Comments on the definition of the term "overlap" as contained in the section were received from the Texas Credit Union League requesting that the term "doing business in this state" be added to the definition. The commenter was in favor of adoption of the section as proposed.

The amendment is adopted under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Act—The Texas Credit Union Act (Texas Civil Statutes, Article 2461-1.01 et seq.).

Business entity—Any agency, association, company, network, stock company, mutual association, mutual company, membership association, membership company, partnership, joint venture or trust company.

Commission—The Credit Union Commission.

Commissioner—The Credit Union Commissioner.

Community credit union—A credit union incorporated to serve, and whose

members consist of, residents of a recognizable community within a well defined geographical area.

Control—Holding or owning, directly or indirectly or through one or more subsidiaries, the power to vote, or proxies representing, more than 10% of the voting shares or rights of any business entity, or the ability to elect or appoint a majority of the directors or trustees of a business entity, or operating as a general partner in or contributing more than 10% of the capital of a business entity, or acting as a trustee of a business entity which is a trust.

CUSO—A business entity, the membership or ownership of which is confined or restricted to credit unions and their members or organizations of credit unions, which entity is designed primarily to serve or otherwise assist credit union operations and of which any one credit union has control.

Department—The Credit Union Department.

Extension of a loan—Modification of a loan whereby the maturity of a note is extended for one calendar month or more. A change of due date is not an extension of a loan if the maturity of a note has been extended less than one calendar month.

Manufactured home—A vehicle without automotive power, designed for human habitation and for carrying persons and property upon its own structure and primarily designed for being drawn by a motor vehicle.

Motor home—A vehicle with self-contained automotive power designed for human habitation and for carrying persons and property upon its own structure.

Nonresidential improved property—All improved property not classified as "Residential improved property" consisting of land on which is located any building of a permanent nature (such as an apartment house, office building, hospital, shopping center, warehouse, commercial garage, or other similar permanent structure), or any building lot, or site which, by reason of installations and improvements that have been completed in accordance with applicable governmental requirements and with general practice in the community, is a building lot or site ready for the construction of any building of a permanent nature.

Open-end credit—Credit extended to or for the benefit of a credit union member on a credit union account pursuant to a plan under which the credit union may permit a member to make purchases or obtain loans,

from time to time, directly from the credit union or indirectly by the use of a credit card, draft, or other device, as the plan may provide. The term does not include negotiated advances under an open-end real estate mortgage or a letter of credit.

Overlap—The situation which exists when a group of persons is eligible for membership in two or more state or federal credit unions doing business in this state.

Person—An individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

Property improvement loans—A loan, the proceeds of which are to be used exclusively for improvement of real property or for the maintenance, repair, modernization, or equipment of real estate.

Recognizable community—A geographical area which possesses such characteristics that the residents of the area share a sense of identification with each other which may be based upon mutual interests, goals, community pride or other similar elements.

Refinancing of a loan—A modification or renewal of a loan brought about by the execution of a new note, based upon a new application for a loan (with or without additional loan advances or security).

Residential improved property—Real property consisting of a residential dwelling having one to four dwelling units, at least one of which is occupied by the owner of the property. This term shall also include one to four unit dwellings occupied in whole or in part by the owner on a seasonal basis.

Residents—Residents include:

(A) All natural persons living or employed in the community;

(B) Associations whose memberships are composed of natural persons of whom at least a majority are eligible for membership in the community credit union; and

(C) A proprietorship, partnership, corporation or other legal entity which has its primary place of business located in the community.

Secured loan—A loan made upon an assignment of an interest in collateral pursuant to applicable state laws so as to make the enforcement or promise more certain than the mere personal obligation of the

debtor or promisor. Any such assignment may include interest in personal property or real property or a combination thereof.

Shares and deposits—All shares, share accounts, deposit accounts, certificates of deposit, certificates of indebtedness, and notes payable of a credit union.

Title—The phrase "of this title" refers to Title 7 of the Texas Administrative Code (TAC), Banking and Securities. This volume of the TAC contains all of the Credit Union Department's rules.

TSGCU—The Texas Share Guaranty Credit Union.

Unimproved property—Real property in a raw or natural state.

Unsecured loan—A loan upon the general credit and financial standing of the borrower. The term shall include loans supported by the signature of a co-maker, guarantor, or endorser.

Well-defined geographical area—A city, town, or county or other geographical area with established boundaries or limits.

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

Issued in Austin, Texas on August 15, 1989.

TRD-8907489

Jim Hale
Commissioner
Credit Union Department

Effective date: September 6, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 837-9236

Organization Procedures

• 7 TAC §91.203

The Credit Union Department adopts an amendment to §91.203, with changes to the proposed text as published in the July 11, 1989 issue of the *Texas Register* (14 TexReg 3332).

The amendment is adopted so that fields of membership of credit unions will be better regulated as to undue overlaps.

Any request for a field of membership expansion that has a potential for overlapping another credit union's field of membership will be supported with a standard application form designed to identify overlaps.

With the exception of the set of comments in opposition to the section, the comments were primarily directed at clarifying the section and correcting typographical errors.

Comments were received from the Texas Credit Union League; Community Credit Union, Richardson; and an individual. The comments of the Texas Credit Union League were neither for nor against the section but were in the form of recommended changes. The comments of Community Credit Union were generally opposed to the regulation of overlaps.

Comment: Request that the issue of overlaps be removed from the section.

Response: The commission disagrees with the comment because the rule is adopted to implement the provisions of Senate Bill 969 which authorizes the Commissioner to consider the effect of overlaps in the incorporation of credit unions.

Comment: Recommend that subsection (c) be clarified to ensure that references to overlap conform to the definition in 7 TAC 91.1.

Response: The rule has been revised in response to the comment.

Comment: Request that subsection (c) of the rule be changed to permit the Commissioner some additional discretion in which credit unions should be notified.

Response: The rule is designed to promote notice to all credit unions in a potential overlap situation; therefore, this change would not be appropriate.

Comment: Request that the means of notice be specified in subsection (c).

Response: The rule has been revised in response to the comment to specify that the notice is by first class mail.

Comment: Request that the rule be clarified by changing the provision "appear in response" to "respond" to eliminate a misunderstanding of what type of appearance is necessary.

Response: The rule has been revised in response to the comment.

Comment: Request that the effect of 7 TAC §91.204 be addressed in the rule.

Response: There is no need to include this in the rule. The requirements of 7 TAC §91.204 will apply. Upon receipt of an application to incorporate, the commissioner will have 30 days to notify the applicant as to whether the application is complete and accepted for filing or is deficient and specific additional information is required. Once the application is accepted, the commissioner will have up to 90 days after the acceptance to render a decision or to set a hearing. If a hearing is held, a decision will be rendered in accordance with the Texas Register and Administrative Procedure Act, Texas Civil Statutes, Article 6252-13a.

Comment: Request guidelines on when the commissioner must hold a hearing.

Response: This is beyond the scope of the original proposal as published in the *Texas Register*. Another rulemaking proposal will need to be initiated to address this issue.

Comment: Request clarification of subsection (d) regarding deadlines for the time in which the commission must act on an appeal where no hearing is held.

Response: 7 TAC §98.96 requires the chairman to set the time of the hearing.

Comment: Subsection (f) should be rewritten to reflect that all of the rules relating to contested cases apply.

Response: Because the section, as published, stated no change in this subsection, this will need to be addressed in a subsequent rulemaking proceeding.

Comment: Request that subsection (g) be clarified to ensure that it is limited to information that is materially inaccurate and contributed to the decision.

Response: The section has been revised in response to this comment by incorporating the changes suggested. The amendment is adopted under the Texas Civil Statutes, Article 2461-11.07, which provides the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act and Article 2461-1.05, which provides the purposes of the Credit Union Act, Article 2461-2.02 and Article 2461-2.03, which relate to the incorporation procedure of credit unions.

§91.203. Incorporation Procedures.

(a)-(b) No change

(c) The commissioner shall review the application to determine whether to approve or deny the application to incorporate. In reviewing the application, the commissioner shall determine whether the proposed field of membership creates an overlap. The commissioner shall require the applicant to identify potential overlaps. The commissioner shall require that notice be given by first class mail to each credit union identified in the application whose field of membership might overlap if the application to incorporate is approved. The commissioner may require notice be given to any other credit union or credit unions which the commissioner deems appropriate to receive notice. The commissioner shall allow at least 30 days after the date of the commissioner's newsletter in which the notice is published as required in subsection (b) of this section for any affected credit union or credit unions to respond to the application prior to taking final action approving or denying the application. The commissioner shall consider the extent and the effect of the overlap. The commissioner may require the applicant credit union to limit or eliminate the overlap in order to achieve the purposes of the Act and promote the welfare and stability of the applicant and the existing state or federal credit unions. The commissioner's decision to approve or deny the application to incorporate shall be evidenced by a written order.

(d) Any person aggrieved by the decision of the commissioner or any incorporator may file a written appeal to the commission and request a hearing on the application to incorporate. If a hearing has been held prior to the commissioner's decision on the application to incorporate, the commission may, in its sole discretion, schedule another hearing on the application. If no hearing has been held prior to the commissioner's decision, the commission shall, within 10 days of receipt of the written appeal, set a date for a hearing. Any such hearing shall be scheduled within 60 days of receipt of the written appeal. The commissioner shall notify all parties of the date, time, and place of the hearing, by registered or certified mail, and shall publish notice of such hearing in the *Texas Register*. The commission shall affirm or reverse the decision of the commissioner after reviewing the information furnished

with the application, the articles of incorporation, the results of any investigation of the application, information in the official records of the department, and the evidence adduced at any hearing by issuing a written order signed by the chairman or vice chairman of the commission. The decision of the commission shall be determined by a majority vote of the members of the commission.

(e)-(f) (No change.)

(g) If information submitted in the application regarding an overlap turns out later to be materially inaccurate, such misinformation may result in the removal of the group from the field of membership of the applicant if the commissioner, after notice and opportunity for hearing, determines such information substantially contributed to the approval of the inclusion of such group.

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

Issued in Austin, Texas, on August 15, 1989.

TRD-8807481

Jim Hale
Commissioner
Credit Union Department

Effective date: September 8, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 837-9236

• 7 TAC §91.206

The Credit Union Department adopts an amendment to §91.206, with changes to the proposed text as published in the July 11, 1989, issue of the *Texas Register* (14 TexReg 3332).

The amendment is adopted so that fields of membership of credit unions will be better regulated as to undue overlaps.

Any request for a field of membership expansion that has a potential for overlapping another credit union's field of membership will be supported with a standard application form designed to identify overlaps.

With the exception of the set of comments in opposition to the section, the comments were primarily directed at clarifying the section and correcting typographical errors.

Comments were received from the Texas Credit Union League which were neither for nor against the section but were in the form of recommended changes, and Community Credit Union, Richardson, Texas, which were against the proposed section and the regulation of overlaps.

Comment: Request that the issue of overlaps be removed from the section.

Response: The commission disagrees with this comment because the section is adopted to implement the provisions of Senate Bill 989, which authorizes the commissioner to consider the effect of overlaps in the incorporation of credit unions.

Comment: Recommend that the requirements of subsection (b) be condensed to more closely resemble the section for a new charter.

Response: The application process for a new credit union charter is prescribed largely by the Credit Union Act. The items required in subsection (b) for an amendment to the field of membership are based upon the statutory factors involved for a new charter.

Comment: Recommend that subsection (e) be clarified to ensure that references to overlap conform to the definition in §91.1.

Response: The section has been revised in response to the comment.

Comment: Request that subsection (c) of the section be changed to permit the commissioner some additional discretion in which credit unions should be notified.

Response: The section is designed to promote notice to all credit unions in a potential overlap situation; therefore, this change would not be appropriate.

Comment: Request that the means of notice be specified in subsection (c).

Response: The section has been revised in response to the comment to specify that the notice is by first class mail.

Comment: Request that the section be clarified by changing the provision "appear in response" to "respond" to eliminate a misunderstanding of what type of appearance is necessary.

Response: The section has been revised in response to the comment.

Comment: Request guidelines on when the commissioner must hold a hearing.

Response: This is beyond the scope of the original proposal as published in the *Texas Register*. Another rulemaking proposal will need to be initiated to address this issue.

Comment: Request clarification of subsection (e) regarding deadlines for the time in which the commission must act on an appeal where no hearing is held.

Response: 7 TAC §89.96 requires the chairman to set the time of the hearing.

Comment: Subsection (g) should be rewritten to reflect that an amendment to articles of incorporation or bylaws is involved and to encompass all of the rules relating to contested cases.

Response: The section has been rewritten to incorporate the recommendation in the comment.

Comment: Request that subsection (f) be clarified to ensure that it is limited to information that is materially inaccurate and contributed to the decision.

Response: The section has been revised in response to this comment by incorporating the changes suggested.

The amendment is adopted under Texas Civil Statutes, Article 2481-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act, and Article 2481-2.06, which relate to the procedure for amending articles of incorporation and bylaws of credit unions.

§91.206. Amendment to Articles of Incorporation and Bylaws.

(a) Each credit union authorized to do business under the Act may submit an application to the commissioner to amend its articles of incorporation or bylaws on forms prescribed by the commissioner. The application shall include the text of the amendment, the date that the board of directors adopted the amendment, a brief statement explaining the purpose of the amendment, and a statement regarding the financial impact on the credit union if the amendment is approved.

(b) For applications to amend the articles of incorporation or bylaws to expand the field of membership of the credit union, the application shall also include the following:

(1) description of the field of membership expansion area in which the community of interest proposed to be served is clearly identified by occupation, association, or residence. If the expansion is for a group in a well defined rural or urban area, the application must state the exact geographical boundaries expressed by city, county, stated radius from the credit union's principal or branch office, or other established boundaries or limits, and a map with the proposed expansion identified should be attached;

(2) description of the proposed group or area indicating the number of persons in the proposed group, the potential membership size and general characteristics of the sponsor or area, and whether the group or area is presently being served by another state or federal credit union;

(3) identification of any overlap that will result from the proposed expansion of the field of membership, including:

(A) the nature and degree of the overlap; and

(B) the effect of the overlap on the applicant and any existing credit union;

(4) explanation of why the proposed expansion is being requested; and

(5) demonstration to the satisfaction of the commissioner of the credit union's ability to adequately serve the proposed expanded field of membership both financially and organizationally. This shall include, unless waived by the commissioner, an explanation of the costs involved in serving the expanded field of membership and when the credit union is projected to recover such costs. The information provided must demonstrate that the expansion is economically feasible.

(c) The commissioner shall review the application to determine whether the

expansion of the field of membership creates an overlap. The commissioner shall consider the extent and the effect of the overlap. The commissioner may require the applicant credit union to limit or eliminate the overlap in order to achieve the purposes of the Act and promote the welfare and stability of the applicant and the existing state or federal credit unions. For an application to expand a field of membership, the commissioner shall require that notice be given by first class mail to each credit union identified in the application whose field of membership might overlap if the application is approved. The commissioner may require notice be given to any other credit union or credit unions which the commissioner deems appropriate to receive notice. The commissioner shall also publish notice of an application to expand a field of membership in the commissioner's newsletter once the application is complete. The commissioner shall allow at least 30 days after the date of the commissioner's newsletter in which the notice is published for any affected credit union or credit unions to respond to the application prior to taking final action approving or denying the application. This subsection shall not apply to any application submitted to accomplish a supervisory merger or consolidation pursuant to the Act, §10.03(f), unless the application encompasses a field of membership not presently served by the credit unions that are being merged or consolidated.

(d) The commissioner shall review and approve or deny each request for an amendment. If the commissioner holds a hearing on the application, he shall include in his notice of hearing a statement that the commission may decide not to hold an additional hearing on the application. The commissioner's decision to approve or deny the application shall be evidenced by a written order.

(e) Any person aggrieved by the decision of the commissioner on an amendment may, within 60 days of the date of the commissioner's order, file a written appeal to the commission and request a hearing on the application. If a hearing has been held prior to the commissioner's decision on the application, the commission may, in its sole discretion, schedule another hearing on the application. If no hearing has been held prior to the commissioner's decision, the commission shall, within 10 days of receipt of the written appeal, set a date for a hearing. The commissioner shall notify all parties of the date, time, and place of the hearing, by registered or certified mail. The commission shall affirm or reverse the decision of the commissioner after reviewing the information furnished with the application, the results of any investigation of the application, information in the official records of the department, and the evidence adduced at any hearing by issuing a written order signed by the chairman or vice chairman of the commission. The decision of the

commission shall be determined by a majority vote of the members of the commission.

(f) An appeal of a decision of the commissioner may be informally disposed of pursuant to the provisions of §93.59 of this title (relating to Informal Disposition of Contested Cases).

(g) Any hearing relating to an application to amend the articles of incorporation or bylaws of a credit union shall be conducted pursuant to the provisions of Chapter 93 of this title (relating to Contested Cases).

(h) Neither the commissioner nor the commission may approve an amendment if they find that it violates the Act or the Rules of the commission adopted under the Act. Reasons for disapproval of an amendment shall be stated with reasonable specificity in a formal order.

(i) If the information submitted in an application which involves an overlap turns out later to be materially inaccurate, such misinformation may result in the removal of the group from the field of membership if the commissioner, after notice and opportunity for a hearing, determines such information substantially contributed to the inclusion of such group.

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

Issued in Austin, Texas on August 15, 1989.

TRD-8907402

John R. Hele
Commissioner
Credit Union Department

Effective date: September 6, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 837-9236

◆ ◆ ◆
• 7 TAC §91.207

The Credit Union Department adopts new §91.207, with changes to the proposed text as published in the July 11, 1989, issue of the Texas Register (14 TexReg 3334).

The new section is adopted because monthly publication of proposed fields of membership for new credit unions and amendments of existing fields of membership is necessary to assure proper regulatory control of credit unions.

All field of membership changes will continue to be published in a monthly newsletter pursuant to a rule requirement.

Comments were received from the Texas Credit Union League and an individual regarding the section generally describing what should be contained in the commissioner's newsletter and the extent that the requirements be set out in the section. The comments were neither for nor against the proposal.

Based on these comments, the commission

has modified the section to eliminate provisions which are already addressed in other sections.

The new section is adopted under Texas Civil Statutes, Article 2491-11.07, which provides for Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.207. *Monthly Publication.* The commissioner shall publish a newsletter monthly, which shall be mailed to all state-chartered credit unions, and to any person who has requested its receipt in writing. The newsletter shall be dated. The commission may establish a fee for copies of the commissioner's newsletter to persons outside of state-chartered credit unions.

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

Issued in Austin, Texas on August 15, 1989.

TRD-8907400

Jim Hele
Commissioner
Credit Union Department

Effective date: September 6, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 837-9236

◆ ◆ ◆
TITLE 10. COMMUNITY DEVELOPMENT
Part II. Texas Department of Commerce
Chapter 178. Texas Community Development Program

◆ ◆ ◆
Subchapter A. Allocation of Program Funds

◆ ◆ ◆
• 10 TAC §§178.10, 178.11, 178.12, 178.14, and 178.17^{anbr}

The Texas Department of Commerce adopts amendments to §§178.10-178.12, 178.14 and 178.17, without changes to the proposed text as published in the July 18, 1989, issue of the Texas Register (14 TexReg 3450).

The amendments relate to the allocation of Community Development Block Grant (CDBG) nonentitlement area funds under the Texas Community Development Program. The amendments only concern the distribution of federal fiscal year 1989 Texas Community Development Program funds.

The amendments include application requirements, regional review committees, citizen participation requirements for applicants and contractors, and selection procedures and criteria.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4413(301), §12.002

which provide Commerce with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities according to department rules.

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

Issued in Austin, Texas on August 18, 1989

TRD-890788

William S. Taylor
Interim Executive Director
Texas Department of
Commerce

Effective date: September 8, 1989

Proposal publication date: July 18, 1989

For further information, please call: (512) 520-8668

◆ ◆ ◆
TITLE 19. EDUCATION
Part I. Higher Education
Coordinating Board
Chapter 9. Public Junior
Colleges

Subchapter D. Basic Standards
◆ ◆ ◆
• 19 TAC §9.63

The Texas Higher Education Coordinating Board adopts an amendment to §9.63, without changes to the proposed text as published in the June 16, 1989, issue of the Texas Register (14 TexReg 2985).

The amendment will allow a better understanding of the current Coordinating Board rules on admissions.

The amendment changes the wording of the admissions rule to clarify the college class level of a high school student who has completed his/her junior year and allows for exception to the rule. A change is also made in §9.63(2) regarding admissions of students who have opted to complete their secondary education with the General Educational Development Testing Program. This policy requires that community colleges adhere to an open admissions philosophy.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §51.062, which provide the Coordinating Board with the authority to adopt rules regarding basic standards.

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

Issued in Austin, Texas on August 14, 1989.

TRD-8907490

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: September 6, 1989

Proposal publication date: June 18, 1989

For further information, please call: (512) 462-6420

◆ ◆ ◆
• 19 TAC §9.65

The Higher Education Coordinating Board adopts an amendment to §9.65, without changes to the proposed text as published in the May 23, 1989, issue of the Texas Register (14 TexReg 2933).

The amendment will promote teaching excellence by providing a means for ensuring systematic faculty professional development in Texas community/junior colleges.

Institutions will develop an institutional plan for faculty professional development which adheres to Coordinating Board Technical and Vocational personnel guidelines and to the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §51.062, which provides the Coordinating Board with the authority to adopt rules regarding qualification and professional growth of faculty.

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

Issued in Austin, Texas on August 14, 1989.

TRD-8907451

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: September 6, 1989

Proposal publication date: May 23, 1989

For further information, please call: (512) 462-6420

◆ ◆ ◆
Chapter 11. Texas State
Technical Institute

Subchapter B. Basic Standards
◆ ◆ ◆
• 19 TAC §11.24

The Higher Education Coordinating Board adopts an amendment to §11.24, without changes to the proposed text as published in the May 23, 1989, issue of the Texas Register (14 TexReg 2927).

The amendment will promote teaching excellence by providing a means for ensuring systematic faculty professional development in the Texas Technical Institute.

Institutions will develop an institutional plan for faculty professional development which adheres to Coordinating Board Technical and Vocational personnel guidelines and to the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §51.062, which provides the Coordinating Board with the authority to adopt rules regarding qualifications and professional growth of faculty.

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

Issued in Austin, Texas on August 14, 1989.

TRD-8907479

James McWhorter
Assistant Commissioner for
Administration
Texas Higher Education
Coordinating Board

Effective date: September 6, 1989

Proposal publication date: May 23, 1989

For further information, please call: (512) 462-6420

◆ ◆ ◆
TITLE 25. HEALTH
SERVICES

Part I. Texas Department
of Health

Chapter 241. Shellfish
Sanitation

Texas Shellfish

The Texas Department of Health adopts the repeal of existing §§241.21-241.24 and adopts new §§241.50-241.100. New §§241.50, 241.53, 241.54, 241.61, 241.62, 241.66, 241.70, 241.77, 241.80, 241.81, 241.85, 241.92, 241.94, and 241.95 are adopted with changes to the proposed text as published in the April 24, 1989, issue of the Texas Register (14 TexReg 1978). The repeals of §§241.21-241.24 and new §§241.51, 241.52, 241.55-241.60, 241.63-241.65, 241.67-241.69, 241.71-241.76, 241.78, 241.79, 241.82-241.84, 241.86-241.91, 241.93, and 241.96-241.100 are adopted without changes and will not be republished.

The repeals of the existing sections and the adoption of the new sections provide for uniform regulation of molluscan shellfish, in conformance with the established National Shellfish Sanitation Program, and current practices in the shellfish industry.

The new sections establish definitions and standards for the classification of shellfish growing areas and the harvesting, processing, and distribution of shellfish. The new sections update and make clearer explanation of the existing Texas shellfish rules and implement the requirements and guidelines established in the 1988 National Shellfish Sanitation Program Manual of Operations, Parts I and II, published by the Interstate Shellfish Sanitation Conference and the United States Food and Drug Administration.

Concerning §241.50, the United States Food and Drug Administration commented that a new definition for a "wet storage operator" had been established for the national program effective June 1, 1989, and recommended that this definition be added to these rules. The department agrees and has added the definition.

Concerning §241.53, a commenter suggested that the date for expiration of certificates be changed to the middle of August. The department agrees with this and has changed the language in subsection (b) to provide for expi-

ration at 11: 59 p.m. on the 18th day of August.

Concerning §241.54, a commenter indicated that the requirement for refrigerating shellstock within one hour of unloading from the boat is too short and requested that a longer time, in the range of four to six hours, be allowed. The department agrees that one hour may be unrealistic under some conditions, but that a time of four to six hours under the warm weather conditions frequently encountered in Texas provides too long a period of time in which unacceptable bacteria growth may occur. Therefore, the department has changed the language to require refrigeration of shellstock within two hours of unloading from the boat.

Concerning §241.54, a commenter wanted shellstock intended for shucking to be exempted from the requirements for refrigeration of shellstock. The department disagrees with this comment since there have been occasions where shellstock intended for shucking has been diverted and sold as shellstock. This shellstock would have been unrefrigerated for longer periods and would represent an increased health threat because of unacceptable bacterial growth due to the lack of refrigeration. Additionally, providing an exemption for some shellfish from the requirements would create an unenforceable situation, where shellstock found exceeding the time requirements could possibly be identified by the holder as intended for shucking.

Concerning §241.54 and §241.51, a commenter wanted to eliminate language he felt would require air conditioning of all shellfish plants, which would be unnecessarily expensive in many cases. The department agrees that the intent of the rule is to require air conditioning only when shellfish processing is carried out under in-plant temperatures which are unacceptably high. Changes have been made in §241.54 and §241.51 which more clearly tie the air conditioning requirement to temperatures during processing times and at more reasonable levels.

Concerning §241.51, a commenter suggested that supervisors be required to be cognizant of the sanitary requirements established in the rules. The department agrees and has included such language in the section.

Concerning §241.52, discussions between the department and the United States Food and Drug Administration during the comment period indicated that the requirement for draining depuration tanks after each 24-hour period was detrimental to the cleaning activity of the shellfish and was no longer recommended. The department has changed the language in this section to require draining and cleaning tanks after treatment is concluded.

Concerning §241.95, the table in subsection (1) was in error. The department has corrected the errors in the table.

The United States Food and Drug Administration submitted several other comments which the department agrees with, but which are addressed either in the Texas Parks and Wildlife Department rules on the issuance of oyster transplant and harvest permits in 31 TAG Chapter 57, or are adequately addressed in other parts of the new molluscan shellfish rules. Therefore, no changes to these sections were made as a result of the

comments.

The department has made minor changes throughout the sections for purposes of grammar or clarification.

The following interested groups or associations made comments concerning the adoption of the sections: the United States Food and Drug Administration, the Texas Oyster Association, and the Coastal Oyster Leaseholder's Association. None of the commenters opposed the adoption of the sections, but each made comments, or had questions or recommendations, regarding specific portions of the sections.

• 25 TAC §§241.21-241.24

The repeats are adopted under Texas Codes Annotated, Parks and Wildlife Code, §76.203, which provides the Texas Board of Health with the authority to adopt rules concerning the regulation of Texas shellfish; and Article 4414b, §1.06, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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

Issued in Austin, Texas on August 14, 1989.

TRD-8607504

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: November 12, 1989

Proposal publication date: April 25, 1989

For further information, please call: (512) 458-7510

Molluscan Shellfish

• 25 TAC §§241.50-241.100

The new sections are adopted under Texas Codes Annotated, Parks and Wildlife Code, §76.203, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas shellfish; and Article 4414b, §1.06, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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

Adequate—That which, in the judgment of the department, is needed to implement these sections and to accomplish the intended purpose in keeping with good public health practice.

Air gap—The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture, or other device and the flood level

rim of the receptacle.

Approved—Acceptable to the commissioner of health and the Division of Shellfish Sanitation Control.

Approved area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to be acceptable for harvesting shellfish for direct marketing.

Authorized agent—An employee of the Department of Health who is designated by the commissioner to enforce provisions of these sections.

Backflow—The flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source.

Backsiphonage—The flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other source into a potable water supply pipe due to negative pressure in such pipes.

Blower—A container for washing shucked shellfish which uses forced air as a means of agitation.

Certificate of compliance (certificate)—A numbered document issued by the Division of Shellfish Sanitation Control which authorizes a person to process shellfish for sale.

Certification—The issuing by the Division of Shellfish Sanitation Control of a numbered document to operate that indicates compliance with these sections.

Certification number—The number assigned by the Division of Shellfish Sanitation Control to each certified shellfish dealer. It consists of a one to five digit number preceded by the two letter state abbreviation and followed by the two letter symbol designating the type of operation certified.

Certified laboratory evaluation officer—A person employed by the Texas Department of Health who has met the requirements of the United States Food and Drug Administration and who has been issued a letter of certification to evaluate shellfish laboratories in the State of Texas.

Classes of Shippers—The classes of shippers are as follows:

(A) **Depuration processor (DP)**—A person who receives shellstock from areas designated by the Texas Department of Health and submits such shellstock to an approved controlled purification process. A depuration processor may not conduct a shellfish purification operation in a building or facility in which shellfish are being stored or handled for other purposes, unless the purification operation, including receiving, storage, packing, and distribution areas, is entirely separated from other operations by physical barriers with no connecting openings.

(B) **Repacker (RP)**—A person other than the original certified shucker/packer who repacks shucked shellfish

into other containers. A repacker may also repack and ship shellstock. A repacker shall not shuck shellfish.

(C) Shellstock shipper

(SS)—A person who grows, harvests, buys, or repacks and sells shellstock. A shellstock shipper is not authorized to shuck shellfish nor to repack shucked shellfish. A shellstock shipper may ship properly packed and labeled shucked shellfish.

(D) Shucker/packer (SP)—A

person who shucks and packs shellfish. A shucker/packer may act as a shellstock shipper or repack shellfish originating from other certified dealers.

(E) Wet storage operator

(WS)—A shipper who purchases or harvests shellstock from areas meeting approved growing area criteria and holds such shellfish in water from an approved source.

Closed area—A shellfish growing area where the harvesting of shellfish is temporarily or permanently not permitted. A closed area status is or may be placed on any of the five classified area designations as established in the *National Shellfish Sanitation Program Manual of Operations* as follows: approved; conditionally approved; restricted; conditionally restricted; or prohibited. For the purposes of these sections, a closed area status shall be established by declaring the area to be a **POLLUTED AREA**.

Commingling—The act of combining different lots of shellstock or shucked shellfish.

Commissioner—The commissioner of health for the State of Texas.

Conditionally approved area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved area is a closed area when the area does not meet the approved growing area criteria. For the purposes of these sections, a closed area status shall be established by declaring the area to be a **POLLUTED AREA**.

Conditionally restricted area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to meet restricted area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally restricted area shall be declared to be a **POLLUTED AREA**. The conditionally restricted area shall be open for transplanting or gathering for depuration only during the times it meets restricted area criteria and is so specified by the Texas Department of Health.

Container—The physical material which is in contact with and/or directly

surrounds the shellfish confining them into a single unit.

Controlled purification or depuration—The process of using any approved artificially controlled aquatic environment to reduce the level of bacteria and viruses in live shellstock.

Corrosion resistant materials—Those materials that maintain their original surface characteristics under normal exposure to the foods being contacted, normal use of cleaning compounds and bactericidal solutions, and other conditions of use.

Cross connection—Any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other containing water of unknown or questionable safety, or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

Dealer—A commercial shellstock shipper, repacker, shucker/packer, or depuration processor.

Department (TDH)—The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 or its successor.

Depuration—See definition for controlled purification.

Depuration plant—A facility of one or more depuration units.

Depuration unit—A tank or series of tanks supplied by a single process water system.

Division of Shellfish Sanitation Control (DSSC)—The division of the Texas Department of Health to which responsibility to classify shellfish growing waters, to issue certificates for the interstate shipment of shellfish, and to regulate harvesting, processing, and shipping of shellfish is delegated, in accordance with the *National Shellfish Sanitation Program Manual of Operations, Parts I and II*.

Dry storage—The storage of shellstock out of water.

Easily cleanable—A surface which is readily accessible, and is made of such materials, has such a finish, and is so fabricated that residues may be effectively removed by normal cleaning methods.

Food and Drug Administration (FDA)—The federal agency in which regulation of foods, including the Cooperative Shellfish Program, is vested.

Food contact surfaces—Those surfaces with which shucked shellfish come in contact and those surfaces from which drainage onto surfaces that come in contact with shucked shellfish ordinarily occurs during the normal course of operations. Food contact surfaces includes utensils and food contact surfaces of equipment.

Gatherer—A person who takes shellfish by any means from a growing area designated by the commissioner for delivery only to a depuration plant.

Growing area—An area which supports or could support live shellfish.

Harvester—A person who takes shellfish by any means from any growing area for delivery to a certified dealer or for transplanting purposes.

Heat shock—The process of subjecting shellstock to any form of heat treatment, such as steam, hot water, or dry heat for a short period of time prior to shucking to facilitate removal of the meat from the shell without substantially altering the physical or organoleptic characteristics of the shellfish.

Internal temperature—The actual temperature of the shellfish meat, as opposed to the air temperature of the area where the shellfish are stored.

Interstate Certified Shellfish Shippers List (ICSSL)—The listing, published by FDA, of dealers certified by the states to pack and ship shellfish.

Label—Any written, printed, or graphic matter affixed to or appearing upon any container of shellfish.

License—The document issued by the Texas Parks and Wildlife Department, under Texas Codes Annotated, the Texas Parks and Wildlife Code, Chapters 47 or 76, which authorizes a person to harvest and transport shellfish for commercial sale.

Lot of shellstock—A collection of containers of shellstock of no more than one days' harvest from a single defined growing area by one or more harvesters.

Lot of shellstock for depuration—Shellstock gathered from a particular area at a particular time and delivered to one depuration plant.

Lot of shucked shellfish—A collection of containers of no more than one days' shucked shellfish product produced under conditions as nearly uniform as possible, and designated by a common container code or marking.

Marine toxins—Poisonous compounds accumulated by shellfish feeding upon toxic microorganisms. The poisons may come from dinoflagellates, e. g. *Gonyaulax catenella*, *G. tamarensis*, and *Ptychodiscus brevis*.

Market shellfish—Shellfish which are, may be, or have been harvested and/or prepared for sale for human consumption as a fresh or frozen product.

National Shellfish Sanitation Program (NSSP)—The cooperative state/Food and Drug Administration/industry program enabling the classification of shellfish growing waters and the certification of interstate shellfish shippers as described in the NSSP Manual of Operations, Parts I and II, or its successor program.

Pack—All activities involved in placing shellfish in containers.

Person—An individual, partnership, corporation, association, or other legal entity.

Poisonous or deleterious substance—A toxic compound occurring naturally or added to the environment that may be found in shellfish and for which a regulatory tolerance limit has been or may be

established to protect public health. Examples of naturally occurring substances would be paralytic shellfish toxins and trace elements geologically leached from the environment, such as mercury. Examples of added substances would be agricultural pesticides and polynuclear aromatics from oil spills.

Polluted area—The declaration of an area determined by the DSSC to be unacceptable for harvesting of shellfish for direct marketing. Shellfish may not be harvested from a polluted area unless they are subjected to transplanting or controlled purification in accordance with these sections and the permitting requirements of the Texas Parks and Wildlife Department, 31 TAC, §57.231 (concerning transplant permits) and §57.232 (concerning harvest permits).

Principal display panel—The part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions for sale.

Processor—A person who depurates, stacks, packs, or repacks shellfish.

Process batch—A quantity of shellfish used to fill each separate depuration unit.

Process water—The water in depuration tanks during the time that shellfish are being depurated.

Prohibited area—The classification of a shellfish growing area determined by the DSSC to be unacceptable for the transplanting, gathering for depuration, or harvesting of shellfish. The only shellfish removal from a prohibited area allowed is for the purposes of depletion.

Restricted area—The classification of a shellfish growing area determined by the DSSC to be unacceptable for harvesting of shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area shall be declared to be a **POLLUTED AREA**. A restricted area may be closed for transplanting or gathering for depuration when the DSSC determines that the area does not meet the restricted area criteria established in the NSSP.

Safe materials—Articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

Sanitary survey—The evaluation of all factors having an effect on the sanitary quality of a shellfish growing area, including sources of pollution, the effects of wind, tides, and currents in the distribution and dilution of the polluting materials, and the bacteriological quality of the water.

Sanitize—The adequate treatment of food contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

Shell—This term used to state mandatory requirements.

Shellfish—All edible species of oysters, clams, and mussels either attached to the shell, fresh or fresh frozen, whole or in part, as defined in the NSSP.

Shellstock—Shellfish in the shell.

Shucked shellfish—Shellfish, whole or in part, from which one or both shells have been removed.

Texas business address—A permanent structure on land within the jurisdiction of the State of Texas where aquatic products or orders for aquatic products are received or where aquatic products are sold, but does not include a boat or any type of floating device, a public cold storage vault, the portion of a structure that is used as a residence, or a vehicle of any kind.

Texas Parks and Wildlife Department (TPWD)—The Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or its successor state agency, having the responsibility for the enforcement of laws concerning harvesting and depletion of the resource in accordance with the NSSP Manual of Operations, Part I.

Transaction record—A form(s) used to document each purchase or sale of shellfish at the wholesale level.

Transplanting—Moving of shellfish from one growing area to another for improving growth, stocking depleted areas and leases, natural cleansing, or for other aquaculture purposes.

Wet storage—The temporary storage of shellfish from approved sources, intended for marketing, in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

§241.53. Certification and Enforcement Procedures.

(a) No shellfish shall be offered for sale for food in the State of Texas unless taken from areas approved by the commissioner, or obtained from sources outside the state which are approved by TDH. If obtained from sources outside of the state, the shellfish must be from areas approved by the state authorities having jurisdiction and must be obtained from shellfish dealers currently certified by the appropriate state authority. Shellfish obtained from sources other than those outlined in this section shall be considered unfit for human consumption. No person shall engage in the gathering, harvesting, stacking, packing, or repacking of shellfish for sale without having complied with these sections. No person shall engage in any activity requiring a certificate under these sections without having applied for and obtained a numbered certificate of compliance pertaining to the particular activity from the commissioner. Any shellfish in the possession of a person holding a valid license issued by TPWD under the Texas Parks and Wildlife Code, Chapters 47 or 76, shall be considered to be offered for sale for food in Texas.

(b) Prior to construction of a new

shellfish plant, or before remodeling of an existing shellfish plant, complete, legible plans showing the floor plan of the building, with dimensions drawn to scale, location of equipment, doors, floor drains, etc., and written, complete operational procedures for all phases of the activity, including flow of the product, shall be submitted to the DSSC for review and approval. A legibly written or typed application on forms provided by TDH must be filed with the DSSC before gathering, harvesting for market, or operation of the plant begins each fiscal year. A certificate of compliance and number shall be issued by the commissioner only after an inspection of the plant by an authorized agent has revealed that the plant and operations are in compliance with these sections. The inspection of a previously certified plant which has exhibited operational problems or violations of operational requirements of these sections shall not be conducted until written, complete operational procedures for all phases of the activity, including flow of the product, are submitted to the DSSC for review and approval. Shellfish operations at the plant shall not begin until the shellfish certificate issued by the commissioner has been received and posted at the plant. Each certificate of compliance shall expire automatically at 11:59 p.m. the 15th day of August following the date of issue. Certificates of compliance shall not be transferable.

(c) After a dealer is certified, unannounced inspections shall be conducted at any time the DSSC has reason to believe the dealer may be in operation and at such frequency as may be necessary to assure that adequate operational and sanitary conditions are maintained. A copy of the completed inspection form listing the noncompliance items observed along with any necessary explanation or recommendation shall be provided to the most responsible individual present at the firm at the conclusion of the inspection. Shellfish inspections and the DSSC forms shall comply with the requirements established in the current NSSP Manual of Operations.

(d) The DSSC may initiate procedures to revoke a certificate of compliance as follows:

(1) The procedures, including the opportunity for a hearing prior to revocation, shall be in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and TDH formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(2) The grounds for revocation shall be one or more of the following:

(A) inspection results indicate unsatisfactory conditions in the plant or the existence of a public health hazard; or

(B) the certificate holder or representative refuses to allow an inspection or otherwise interferes with the authorized TDH agent in the performance of his or her duties.

(e) The commissioner or his designee may revoke a certificate of compliance prior to a hearing as follows:

(1) The grounds for revocation shall be one or more of the following:

(A) the shellfish create or appear to create an imminent hazard to public health;

(B) the certificate holder or representative refuses to allow an authorized TDH agent to inspect the facilities and premises when the agent has reason to believe that an imminent hazard to public health may exist;

(C) cooling temperatures violate the requirements of these sections;

(D) pathogenic bacteria are isolated in any sample; or

(E) sewage becomes accessible to flies or other insects, rodents, or other vermin.

(2) Immediately after a revocation, the commissioner or his designee shall give the certificate holder the opportunity for a hearing in accordance with TDH formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(f) After certification of a facility, inspections shall be conducted at least three times each six months. Upon finding a violation of these sections, an authorized agent of TDH shall provide a written description of the violations as provided in these sections. Any violation of the same requirement found on a consecutive inspection may result in certificate revocation in accordance with subsection (d) of this section.

(g) A person whose certificate has been revoked may not process any shellfish until the DSSC is satisfied that all necessary corrections have been made. A new certificate will not be issued until an inspection establishes that the firm is in full compliance with all applicable criteria of these sections. A person whose certificate has been revoked shall not apply for a new certificate for at least 30 days from the effective date of revocation.

(h) Should the commissioner deem it reasonably necessary for the enforcement of these sections, he is empowered to require of each person holding a certificate to post and maintain with him a good and sufficient bond, with a corporate surety or two personal sureties approved by the commissioner, or to make a cash deposit in a

form acceptable to the commissioner. The bond will be posted or the cash deposited on the condition that the certificate holder will faithfully comply with all legal requirements imposed by virtue of the law and that, failing such, the certificate holder or his surety will pay as forfeiture a sum of at least \$1,000.

(i) By acceptance of a certificate, the holder agrees to save, hold harmless, and indemnify the State of Texas, TDH, and its employees against any and all liability, claims, or losses for property damage or personal injury which result in whole or in part from the certificate holder's activities. The State of Texas shall not be held liable for financial losses incurred by the shellfish transplanters, gatherers, harvesters, plant supervisors, or plant owners due to failure of the shellfish activity, confiscation of shellfish, loss of shellfish, or other reasons.

§241.54. Harvesting and Handling Shellstock.

(a) Boats and trucks.

(1) All boats used for harvesting or transporting shellstock and all trucks used for dry storing or hauling shellstock shall be constructed, operated, and maintained so as to prevent contamination, deterioration, or decomposition of the shellstock and shall be kept clean. All shellfish boats or trucks shall be subject to approval by the commissioner or his duly authorized agent.

(2) Decks and storage bins shall be constructed and located so as to prevent bilge water or polluted over board water from coming into contact with the shellstock.

(3) Bilge pump discharges shall be located so that pumpage will not contaminate shellstock or the boat.

(4) Body waste shall not be discharged overboard from any boat at any time.

(5) Portable toilets shall be provided on each boat, shall be used only for the purpose intended, and shall be secured and located so as to prevent contamination of the shellfish by spillage or leakage.

(6) An adequate supply of toilet paper and hand cleanser and/or sanitizer shall be provided on each boat.

(7) The contents of portable toilets shall be emptied only into an approved sewage disposal system, and the portable toilets shall be cleaned before being returned to the boat. Facilities used for cleaning food processing equipment shall not be used for cleaning portable toilets.

(8) Sacks or other containers used for storing shellstock shall be clean and fabricated from safe materials. Storage areas shall be constructed of nontoxic materials.

(9) Boat decks, truck floors, and

storage bins shall be kept clean with potable water or water from an approved growing area and shall have effective drainage.

(10) Adequate coverings shall be provided on harvest boats to protect shellstock from exposure to hot sun, birds, and other adverse conditions.

(11) Portions of boats or trucks (decks, storage bins, floorbeds, etc.) and all other equipment (shovels, wheelbarrows, rakes, etc.) coming in contact with shellstock during handling or transport from polluted areas to approved areas for relaying shall be thoroughly cleaned and sanitized immediately after unloading before they are used to transport or handle shellfish from approved areas.

(12) Commercial harvesters shall be required to deliver shellstock to a certified dealer within the day the shellstock is harvested. For this purpose a day shall be considered to be 12 a.m. to 12 a.m. Delivery of shellstock is considered to be transfer of the shellstock from the boat to the dock and acceptance by the certified dealer. Commercial harvesters shall sell their shellstock only to a currently certified shellfish dealer. The certified dealer shall place a properly completed tag on each sack immediately upon accepting control from the harvester.

(13) Shellstock shall be placed under mechanical refrigeration at air temperatures between 45 degrees fahrenheit and 35 degrees fahrenheit within two hours of unloading from the boat. Mechanical refrigeration facilities shall be adequate in size and cooling capacity to refrigerate all shellstock on the premises. Each facility shall be equipped with an automatic temperature regulating control (thermostat) and an indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location in the storage compartment.

(14) Refrigerated shellstock shall be maintained at internal temperatures between 45 degrees fahrenheit and 35 degrees fahrenheit. After initial refrigeration, shellstock removed from refrigeration shall not be permitted to remain in air temperatures above 45 degrees fahrenheit for more than two hours. The internal air temperature in trailers shall be at or below 45 degrees fahrenheit when shellstock loading begins.

(15) Trucks used to transport shellstock shall have the storage area constructed of a nontoxic, smooth, impervious material so as to protect the shellfish from contamination and shall be kept clean. Shellstock, other than for delivery to a strucking plant within approximately 50 miles or approximately one hour travel time, shall be transported in mechanically refrigerated trucks that can maintain an air temperature between 45 degrees fahrenheit and 35 degrees fahrenheit, shall be palletized, and shall be arranged to allow maximum air circulation. Shellstock storage

areas shall be similarly constructed.

(16) Dogs, cats, or other animals shall not be permitted on vessels, in vehicles, or in any other area where shellstock is held or transported.

(b) **Washing of shellstock.**

(1) Shellstock shall be washed reasonably free of bottom sediments and debris at the time of harvest or as soon after harvesting as is feasible. Washing shellstock shall be the responsibility of the harvester.

(2) Water used for washing shellstock shall be obtained from an approved growing area, or from other safe sources approved by TDH.

(c) **Shellstock packing and identification.**

(1) Sacks, boxes, and other shellstock packing containers shall be clean and fabricated from safe material.

(2) A shellfish harvester shall sack all shellstock prior to delivery to a certified dealer.

(3) The initial certified shellfish dealer shall securely affix an approved, durable, waterproof, tag or label to each container of shellstock immediately upon accepting control of the shellstock. This tag or label shall remain on the container during transport and storage.

(4) The certified dealer's tags or labels shall contain the following information:

(A) the name of the certified business as it appears on the certificate issued by the DSSC;

(B) the address of the business, including at least the city and state;

(C) the complete certification number assigned by the DSSC;

(D) the most precise identification of the harvest location as is practicable;

(E) the date of harvesting;

(F) the type of shellstock; and

(G) the name of the harvester or the harvest boat.

(5) All information shall be permanently printed on the tags or labels by the printing company, except the date of harvest, harvest location, and the name of the harvester or harvest boat, which shall be added by the certified dealer, before the tags or labels are affixed to the container.

All information either printed or added to the tag or label must be done using a permanent type ink, and shall not be altered or changed after being entered on the tag or label. The certification number shall only be complete and valid if it has a proper state two letter abbreviation, followed by a one to five digit number, followed by a two letter abbreviation for the type of operation the dealer is certified to perform (SP for shucker/packer, RP for repacker, SS for shellstock shipper, or DP for depuration plant).

(6) The certified dealer shall accept responsibility for the shellstock at the time the tag is attached to the sack.

§241.61. Heating and Ventilation.

(a) Working rooms shall be adequately ventilated and heated or cooled. Adequate ventilation shall be provided to minimize odors, noxious fumes, vapors, or condensation (including steam) in areas where shellfish may become contaminated. Operation of cooling, heating, or ventilating equipment shall not create conditions that may cause shellfish to become contaminated.

(b) Dealers who wish to process shellfish when the temperature inside the plant exceeds 80 degrees fahrenheit shall have their facilities cooled with mechanical refrigeration adequate to maintain the internal air temperature at or below 80 degrees fahrenheit at all times the shellfish are being processed.

§241.62. Water Supply.

(a) Potable water shall be from a safe source, protected from contamination, and the water supply system shall be constructed, maintained, and operated according to the Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems, under Chapter 337 of this title (relating to Water Hygiene).

(b) Running water shall be provided at an adequate temperature and pressure in all areas where needed to process food, clean equipment, utensils, or containers, and supply sanitary facilities.

(c) Hot and cold water shall be provided through a mixing valve at each compartment of every three compartment sink and at each hand washing lavatory.

§241.66. Construction of Utensils and Equipment.

(a) All utensils and equipment shall be designed and fabricated from smooth, corrosion resistant, safe materials, durable under conditions of normal use, and resistant to denting, buckling, pitting, chipping, and crazing.

(b) There shall be no exposed

screws, bolts, or rivet heads on food contact surfaces, and all joints on food contact surfaces shall be welded and have a smooth surface.

(c) Blower tanks, tubs, and skimmers shall be so constructed that their top rims are at an adequate height above the floor to prevent product contamination.

(d) Blower tanks, skimmers, reusable in plant storage containers, shucking buckets, and pens shall conform to the *Shellfish Industry Equipment Construction Guides*, NSSP Part II, Appendix B. Equipment in use prior to January 1, 1989, having seams soldered with safe materials which are corrosion resistant, smooth, and easily cleanable may continue to be used by the processor using them on that date so long as the processor obtains certification each consecutive year at that location and the equipment remains in good repair.

(e) All utensils and equipment shall be subject to inspection for compliance by an agent of the DSSC prior to certification and shall be kept in good repair.

(f) All equipment, including external and internal blower airlines and hoses below a point two inches above the overflow level of the tank and blower drain valves, shall be constructed so as to be easily cleanable; perforations in skimmers shall be smooth to facilitate cleaning; and all internal angles in the food contact zone shall be filled or otherwise fabricated to facilitate cleaning. The use of wire or fiber mesh in the food contact zone of equipment is not acceptable, unless it is of approved material, is properly designed and constructed for such usage, and acceptable cleaning and sanitizing procedures are established. Surfaces which are not in the food contact zone shall be constructed so that they can be kept clean; seams and joints shall be welded or filled with food grade solder ground to a smooth surface; and there shall be no inaccessible spaces in which dirt or organic material might accumulate.

(g) Air pump intakes shall be located in a protected place. Air filters shall be installed on all blower air pump intakes. Oil bath type filters shall be prohibited.

§241.70. Shucking of Shellfish.

(a) Shellfish shall not be subjected to contamination while being held or processed.

(1) Shellstock to be shucked shall be stored an adequate height off the floor (minimum four inches) and in such locations that contamination from standing water or splash from foot traffic does not occur.

(2) Shellstock shall be reasonably free of mud when shucked.

(3) Only safe and wholesome shellfish shall be shucked.

(4) Shellfish with badly broken shells shall be discarded.

(b) During shucking and packing, shellfish shall not be exposed to contamination or held for times or at temperatures exceeding the requirements established in these sections.

(1) Shucking buckets and storage containers shall be so used that their rims are at an adequate height above the floor to prevent contamination from floor splash.

(2) Shellstock shall be refrigerated in compliance with §241.54 of this title (relating to Harvesting and Handling Shellstock). When shellstock is shucked, the meats shall be shucked and delivered to the packing room within the two hours specified as allowable at air temperatures above 45 degrees fahrenheit.

(3) Shucking buckets shall be completely emptied at the packing room and no overage shall be returned to the shucker. Overages shall be held in a sanitary container on ice in the packing room until they can be combined with other oysters of the same lot to be packed.

(4) Shucking containers shall be rinsed clean with running water and sanitized before each filling.

(5) The precautions that apply to hand shucking methods shall be applied to mechanical procedures for the shucking of all species of shellfish.

(c) The use of dip buckets for hand or knife rinsing shall be prohibited.

(d) Shellstock from different lots shall be kept separate, and shucking operations shall be scheduled to avoid commingling shellfish from different lots.

(e) Water used for fluming or washing shellstock and the shucked product shall be obtained from an approved source.

§241.77. Records.

(a) Complete, accurate, and legible records in a form approved by the DSSC shall be maintained by each certified dealer. These reports shall be sufficient to document that the shellfish are from an approved source and to permit a container of shellfish to be traced back to the specific incoming lot from which it was taken. Purchases and sales shall be recorded in a permanently bound ledger book. Transaction records indicating origin of the product shall be maintained in a legible, orderly file. If computer records are maintained, they shall be approved by the DSSC.

(b) Records covering purchases and sales of fresh shellfish shall be retained for a minimum of one year. Records covering purchases and sales of frozen shellfish shall be retained for at least two years or for a period of time that exceeds the shelf life of the product, if that period is longer than two

years.

(c) Records shall be made available for inspection upon verbal request by an agent of the DSSC during all normal working hours.

§241.80. Personal Cleanliness.

(a) Employees handling shucked shellfish shall wear clean outer garments. These outer garments shall be rinsed or changed as necessary to be kept clean. Persons rinsing and packing shellfish shall wear an apron of approved material.

(b) Employees shall wash their hands thoroughly with soap and water and shall sanitize their hands before starting work after each absence from the work station, after each interruption, and at any other time when their hands may have become soiled or contaminated. Utensil sinks shall not be used for hand washing. There shall be at least one hand washing lavatory in the packing room and one in the shucking room.

(c) Finger cots, gloves, and shields, if worn by shuckers, shall be sanitized as often as necessary or at least twice daily; shall be properly stored until used; and shall be maintained in an intact, clean, and sanitary condition. Finger cots, gloves, and shields shall be made of an impermeable material except where use of such materials would be inappropriate or incompatible with the work involved.

(d) Hands of employees handling shucked shellfish shall be either protected by sanitized finger cots or gloves, or shall be washed and disinfected immediately before any manual handling of the shucked shellfish.

(e) Employees shall not store clothing or other personal belongings, eat food, chew gum, drink beverages, use tobacco in any form, spit, or conduct any other unsanitary acts in areas where shellfish are being stored, shucked, or packed or in areas that are being used for washing equipment or utensils.

(f) Employees handling shucked shellfish shall wear effective hair restraints, remove all insecure jewelry, and remove from hands any jewelry that cannot be adequately sanitized. If jewelry cannot be removed from hands, adequate finger cots or gloves shall be worn.

(g) Employees shall take other necessary precautions to prevent contamination of shucked shellfish with microorganisms or foreign substances, including, but not limited to, perspiration, hair, cosmetics, chemicals, and medicants.

§241.81. Education and Training.

(a) Supervisors shall receive appropriate training in proper food handling techniques and food protection principles and

shall be cognizant of personal hygiene, sanitary practices, and the requirements established in these sections. Failure of any person or persons to avail themselves of this information does not relieve them of a violation of these sections.

(b) Employees shall receive instruction and training in proper food handling and personal hygiene and sanitary practices from supervisory personnel or from other sources acceptable to the DSSC.

(c) Unsanitary practices of employees shall be brought to the attention of the employees by their supervisor and the employees shall be instructed on the proper sanitary practice that is to be used.

§241.85. Depuration Certificate Requirements.

(a) Any person who obtains approval for certification to operate a depuration plant shall furnish a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or make a cash deposit in the form of a cashier check, a certified check, or a postal money order prior to issuance of the certificate. The corporate surety, two personal sureties, or the cash deposit that is posted as bond shall be on the condition that the certificate holder will comply with the requirements in the sections of this undesignated head pertaining to the gathering, depuration, and sale of shellfish. Upon failure to comply with these requirements, the certificate may be revoked, and the certificate holder or his surety, corporate or personal, shall pay as forfeiture to the commissioner the sum of at least \$1,000.

(b) Failure to comply with any requirements relating to depuration established in the sections of this undesignated head, or the refusal to allow an inspection of a depuration plant shall be considered to constitute an imminent hazard to public health. Such failure to comply shall constitute grounds for revocation of the depuration certificate prior to a hearing in accordance with the procedures established in §241.53 of this title (relating to Certification and Enforcement Procedures), and termination of all depuration operations. Shellfish in the plant at the time of a violation are subject to immediate removal and destruction. A new certificate may be issued when compliance with the sections of this undesignated head has been reestablished and a new bond has been posted as described in subsection (a) of this section. The facilities for which a certificate is issued are subject to inspection during normal business hours and at any time shellfish are being treated or stored on the premises.

(c) The depuration plant owner shall designate a plant supervisor and assistant plant supervisor to be accountable for compliance with all applicable state laws and rules. Supervisory personnel shall have a thorough knowledge of the process and

shall be present during critical process operations.

(d) The depuration plant shall be used for no purpose other than the treatment of shellfish and research activities related thereto, unless approved by TDH. Persons not engaged in the operation of the shellfish depuration plant or not representing TDH, TPWD, or the United States Food and Drug Administration shall not be allowed access to the depuration plant or the laboratory, unless approved by TDH.

(e) No depuration facility shall be built in conjunction with another certified shellfish dealership. Any person desiring to operate both a depuration facility and a dealership of any other category shall be required to hold a separate certificate for each. A certificate issued for the operation of a specific depuration facility is not applicable to the operation of any other depuration facility.

(f) All depuration activities shall be conducted in accordance with the NSSP Manual of Operations unless specified otherwise in the sections of this undesignated head.

§241.92. Depuration Plant Operation.

(a) Exclusion of infected persons. Any person infected with any disease in a communicable form, or known to be a carrier of any disease which can be transmitted through the handling of shellfish, or who has an infected wound or open lesion on any portion of his body, shall be excluded from the plant until appropriately treated and found by a licensed physician to be free from disease causing organisms.

(b) Source of shellfish. Shellfish shall be accepted for treatment at a shellfish depuration plant only from areas designated for this purpose, and only if they meet the raw product specifications established in the process verification study. A detailed description of all areas from which shellfish may be gathered for treatment purposes, updated as necessary, shall be filed by TDH with TPWD and the plant supervisor. The plant supervisor or assistant plant supervisor shall inspect all containers of raw shellfish upon arrival at the plant to verify that they contain the species and quantity stated on the surveillance officer's reports.

(c) Shellfish containers. Shellfish shall be accepted for treatment and released after treatment in clean containers only. All containers and conveyances shall be constructed of nonabsorbent, nontoxic, and rustproof material; and kept clean and free from foreign matter. Burlap bags or similar absorbent material shall not be used for transporting shellfish to the treatment plant nor for the removal of shellfish from the plant.

(d) Culling. All untreated shellfish prior to, or upon arrival at the plant, shall be thoroughly inspected and culled by the

plant supervisor or assistant plant supervisor. All dead shellfish, or shellfish in broken or cracked shells shall be disposed of as waste. The plant supervisor or assistant plant supervisor shall be held responsible for suitable culling that shall include the removal and disposal of dead shellfish or shellfish with broken or cracked shells both before and after depuration. The quantity of shellfish disposed of as waste shall be recorded and maintained as part of the plant records. Where needed to prevent cross contamination, separate culling facilities shall be provided for untreated and treated shellfish.

(e) Washing shellfish.

(1) Before treatment, all shellfish shall be thoroughly washed or hosed with water taken from a source approved by TDH. Immersion of shellfish for washing purposes is prohibited.

(2) After treatment, all shellfish shall be thoroughly washed or hosed with water taken from a source approved by TDH. Where needed to prevent cross contamination, separate washing facilities shall be provided for untreated and treated shellfish.

(f) Baskets used in the treatment process. All baskets used in the treatment process shall be of suitable size, designed for easy handling and cleaning, and made of impervious material(s). Baskets shall be of such design as to allow water to flow freely over the shellfish in the treatment tank. Baskets shall not be filled beyond the level which will allow free circulation of water during the treatment process. The height of the shellfish in the baskets shall not exceed three inches. Baskets shall be stacked in such a manner as to allow free circulation of water and a minimum of three inches clearance in all directions. Containers used for treatment purposes shall not be used for any other purpose and no other equipment shall be placed in the treatment tank.

(g) Shellfish treatment. All shellfish, upon receipt at the treatment plant, shall be promptly treated or placed in controlled storage. Shellfish shall be treated for a minimum period of 48 hours or for such longer time as required by TDH.

(h) Washing treatment tanks. After each treatment period, the water in the tanks shall be drained, and feces, pseudo-feces, and any other waste matter shall be flushed out of the tanks. Treatment tanks shall be sanitized with an approved sanitizing agent and thoroughly rinsed prior to the tanks being refilled with treatment water.

(i) Commingling prohibition. Different lots of shellstock for depuration shall not be commingled before or during treatment. Different species of shellfish shall not be depurated in the same depuration unit unless studies demonstrate the species are compatible. Different lots of treated shellstock shall not be commingled during

packing.

§241.94. Depuration Process Water Control-Sampling.

(a) All shellfish treatment controlled processes shall have quality tests to determine if standards are being met and if controls are effective.

(b) To insure the continuing effectiveness of the shellfish treatment process, the following minimum sampling procedures shall be followed.

(1) Incoming water shall be tested for temperature, turbidity, salinity, dissolved oxygen, bacteriological levels, and pH prior to the initiation of the 48-hour minimum treatment process.

(2) Treatment tank water shall be tested for temperature, turbidity, salinity, dissolved oxygen, bacteriological levels, and pH once per day per tank.

§241.95. Depuration Treatment Water-Standards.

(a) Bacteriological. All water to be used in shellfish treatment tanks shall be subjected to either ultraviolet light treatment or treatment with ozone before use and at all times during treatments. The treated water shall be of bacterial quality equal to or better than the quality of water required in the department's Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems, under Chapter 337 of this title (relating to Water Hygiene).

(b) Dissolved oxygen. The amount of dissolved oxygen in the water in the treatment tanks shall be at least five milligrams per liter and shall be measured daily at the discharge end of each tank. If aeration is required to maintain dissolved oxygen levels, it shall be accomplished in such a manner that deposited material in the tanks is not redistributed in the treatment water.

(c) Temperature. Treatment tank water temperatures shall be measured daily during the treatment process at the discharge end of the tanks. The temperature of water shall be maintained between 50 degrees Fahrenheit and 77 degrees Fahrenheit.

(d) Turbidity. Turbidity in the treatment process water shall not exceed 20 nephelometric turbidity units (N.T.U.s) or equivalent, and shall be measured daily at the tank inlet, unless an automatic device for sensing disinfecting light output and shutting down the pumping system when output is not adequate to disinfect the process water is an integral part of the system.

(e) Salinity. Salinity of the treatment process water may vary from a minimum of 10 parts per thousand to a maximum of 30 parts per thousand and

shall be measured daily. The salinity should be within 20% of the salinity of the area from which the shellfish were gathered.

(f) pH. The pH of the treatment process water shall range from greater than or equal to 7.0 to less than or equal to 8.4 and shall be measured daily.

(g) Metallic ions and compounds. Levels of metallic ions and compounds shall not exceed levels found in approved shellfish harvesting areas and analyses shall be conducted, if required by TDH.

(h) Pesticides, detergents, and radionuclides. Levels of pesticides, deter-

gents, and radionuclides shall not exceed levels found in approved shellfish harvesting waters and analyses shall be conducted, if required by TDH.

(i) Summary table. The following table summarizes the requirements of this section.

<u>Parameter</u>	<u>Minimum</u>	<u>Maximum</u>
Bacteriological (total coliform/100ml)	Less than 1.8	Less than 1.8
Dissolved Oxygen (milligrams/liter)	5.0	Saturation
Temperature	50°F.	77°F.
Turbidity (nephelometric turbidity units)	0	20 units
Salinity	10 ppt	30 ppt
pH	7.0	8.4
Metallic Ions Compounds	Not exceeding levels found in approved shellfish harvesting areas.	
Pesticides, Detergents and Radionuclides	Not exceeding levels found in approved shellfish harvesting areas.	

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

Issued in Austin, Texas on August 14, 1989.

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Robert A. MacLean
Deputy Commissioner
Texas Department of
Health

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For further information, please call: (512) 458-7298

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 47. Primary Home Care

Provider Contracts

• 49 TAC §47.3908

The Texas Department of Human Services adopts new §47.3908, with changes to the proposed text republished in the February 21, 1989, issue of the Texas Register (14 TexReg 948).

The section is justified because it allows for an eligible provider to receive a substantial portion of its payment at the beginning of the month after services are delivered.

The section will function by providing a system that helps providers receive timely reimbursements.

Although no public comments were received regarding the adoption of this section, the department made editorial changes to clarify the language.

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§47.3908. Expedited Payment System.

(a) Eligibility for participation.

(1) Primary home care providers must have billed for services for 12 consecutive months before application. Providers must have delivered and received payment, after line item rejections, for 90% of their authorization for claims processed for three service months preceding the month of application.

(2) For purposes of contract assignments, the following requirements apply.

(A) If the assignee is partici-

pating in the expedited payment system, the assignee may continue to participate after the assignment of new clients.

(B) If the assignee is not participating in the expedited payment system and has new clients assigned, the assignee must apply to participate according to the requirements in paragraph (1) of this subsection.

(b) Claim requirements.

(1) Providers must mail the expedited payment claim by the 20th of the service month.

(2) Providers must reconcile the previous month's expedited payment by the 25th of the current month. If a provider's expedited payment is not liquidated by the date the billing is posted for the next payment, the provider does not receive the next expedited payment.

(3) Providers must complete and send expedited claims properly; failure to do so results in rejected claims and no expedited payment for the month payment is claimed.

(c) Request to participate.

(1) Providers must obtain approval from the department to participate in the expedited payment system.

(2) Providers wishing to participate in the expedited payment system must send a written request to the Texas Department of Human Services. The request must state when the provider began providing services to department clients, the contract number(s), and a contact person in the provider agency. Requests to participate are considered on a contract-by-contract basis.

(6) Billing options. If a provider agency is billing by tape or electronically and is subsequently enrolled in the expedited payment system, the agency must continue to bill by tape or electronically. Providers may bill by paper, tape, or electronically.

(c) Sanctions.

(1) Providers who do not comply with the reconciliation requirements will not receive an expedited payment for at least one month.

(2) For providers who have continuous problems billing for expedited payment, the department retains the right to cancel participation in the expedited billing system.

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

Issued in Austin, Texas, on August 18, 1989.

TRD-9907672

Ronald L. Lindsey
Commissioner
Texas Department of
Human Services

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For further information, please call: (512) 450-3765.

Chapter 53. Family Care

Claims

• 49 TAC §53.504

The Texas Department of Human Services adopts new §53.504, with changes to the proposed text as published in the February 21, 1989, issue of the *Texas Register* (14 TexReg 844).

The section is justified because it allows for an eligible provider to receive a substantial portion of its payment at the beginning of the month after services are delivered.

The section will function by providing a system that helps providers receive timely reimbursements.

Although no public comments were received regarding the adoption of this section, the department made editorial changes to clarify the language.

The new section is proposed under the Human Resource Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§53.504. Expedited Payment System.

(a) Eligibility for participation.

(1) Family care providers must have delivered and received payment, after less than objections, for 80% of their authorization for claims processed for three service months preceding the month of application.

(2) For purposes of contract assignments, the following requirements apply.

(A) If the assignee is participating in the expedited payment system, the assignee may continue to participate after the assignment of new clients.

(B) If the assignee is not participating in the expedited payment system and has new clients assigned, the assignee must apply to participate according to the requirements in paragraph (1) of this subsection.

(b) Claim requirements.

(1) Providers must mail the expedited payment claim by the 20th of the service month.

(2) Providers must reconcile the previous month's expedited payment by the 25th of the current month. If a provider's expedited payment is not liquidated by the date the ceiling is posted for the next payment, the provider does not receive the next expedited payment.

(3) Providers must complete and send expedited claims properly; failure to do so results in rejected claims and no expedited payment for the month payment is claimed.

(c) Request to participate.

(1) Providers must obtain approval from the department to participate in the expedited payment system.

(2) Providers wishing to participate in the expedited payment system must send a written request to the Texas Department of Human Services. The request must state when the provider began providing services to department clients, the contract number(s), and a contact person in the provider agency. Requests to participate are considered on a contract-by-contract basis.

(d) Billing options. If a provider agency is billing by tape or electronically and is subsequently enrolled in the expedited payment system, the agency must continue to bill by tape or electronically. Providers may bill by paper, tape, or electronically.

(e) Sanctions.

(1) Providers who do not comply with the reconciliation requirements will not receive an expedited payment for at

least one month.

(2) For providers who have continuous problems billing for expedited payment, the department retains the right to cancel participation in the expedited billing system.

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

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Ronald L. Lindsey
Commissioner
Texas Department of
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Part X. Texas Employment Commission

Chapter 301. Unemployment Insurance

• 40 TAC §301.33

The Texas Employment Commission adopts new section §301.33, with changes to the proposed text as published in the June 27, 1989, issue of the *Texas Register* (14 TexReg 3138).

The new section will set out the standard for determining whether an employee leasing company is an employer for purposes of the Texas Unemployment Compensation Act. Because this question has been controversial, the formalized setting out of the standard as a rule will benefit all involved.

The new section defines an employee leasing company and sets out an extensive list of factors to be considered in determining when such a company is an employer for purposes of the Texas Unemployment Compensation Act. The new section will be used by the tax department and by the commission in making such determinations.

The Texas Chapter of the National Staff Leasing Association, Inc., commented that subparagraph (6) of paragraph (3) set out a factor not appropriate to making the determination involved in this section. The agency agreed and deleted this subparagraph from the section.

The new section is adopted under Texas Civil Statutes, Article 5521b, which provides the Texas Employment Commission with the authority to adopt, amend, or rescind rules as it deems necessary for the effective administration of this Act.

§301.33. *Employee Leasing.* This section shall govern the commission in determining whether an employee leasing company is an employer for purposes of the Act.

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

(A) Employee leasing company—An entity offering services to the gen-

employees or personnel of a client onto that entity's payroll and leases them back to that client on a continuing basis as agreed to by the client and that entity, and which keeps the records required by §301.6 of this title (relating to Records of Employing Units) and maintains a list of that entity's clients and of the workers who have been assigned to work at each client facility.

(B) Client-A party who has contracted with an employee leasing company for that employee leasing company to provide workers to perform services for the party where the party has some control over the manner and means that the worker performs services.

(C) Worker-A person provided by an employee leasing company to perform services for a client.

(D) Control or direction-Shall have the same meaning in this employee leasing section as those words have under the Act, §19(g)(1).

(2) An employee leasing company that pays the wages of the worker and in the determination of the commission has the right both in contract and in fact to exercise control or direction over the worker's work, whether or not such right has been delegated to the client, is the employer of the worker for purposes of the Act. Unless and until the employee leasing company has shown, to the satisfaction of the commission, that it has the right, both in contract and in fact, to exercise control or direction over the worker's work, using such considerations as those set out in paragraph (3) of this section, any delegation or purported delegation of such right, or any lack of such delegation or purported delegation, will be irrelevant to the determination of whether the employee leasing company is the employer of the worker.

(3) In making the determination called for in paragraph (2) of this section, the commission and its staff will be guided by such considerations as those set out as follows.

(A) Is there a written agreement between the leasing company and the client? If so, attach a copy.

(B) What services are made available to the client by the leasing company? For example, payroll processing, management, recruitment, training, bookkeeping, etc.

(C) Does the leasing company maintain a list of clients pursuant to paragraph (1)(A) of this section? If not, identify clients.

(D) Is there a written agreement between the leasing company and the individual workers who perform services for the client? If so, attach a copy. If not, is there a written agreement between the workers and the client? If so, attach a copy.

(E) On what basis is the leasing company paid for the services provided to the client? Must the client company prepay the actual or estimated payroll before the leasing company produces the actual payroll checks for distribution to the workers? If not, must the client company give some other form of security? For example, an irrevocable letter of credit, surety bond, etc.

(F) How, if at all, is the economic profit or loss of a client shared by the leasing company?

(G) Were the leasing company and the client company or their officers, managers, or owners affiliated with each other in any way before the lease agreement was entered into? Describe. Were or are they affiliated or related to each other in any way at the present time? Describe.

(H) Does the leasing company maintain a separate checking account for each client? If not, are payroll funds segregated for each client?

(I) On whose account are the payroll checks drawn?

(J) Who is authorized to sign payroll checks?

(K) How do paychecks get from the leasing company to the workers?

(L) How does the leasing company become aware of the amounts due to each worker? Who maintains the payroll records? Who maintains the time cards?

(M) Who maintains the personnel files on each worker? If the personnel files are maintained by the leasing company, do the files reflect:

- (i) date of hire;
- (ii) date of termination;
- (iii) rate of pay;
- (iv) unit of pay;
- (v) application for employment;
- (vi) W-4;
- (vii) job title;
- (viii) job location;

(ix) performance evaluations?

(N) On whose premises are the worker's services performed? Does the leasing company have an ownership or leasehold interest in the work site premises?

(O) At the time the agreement between the leasing company and the client was entered, were the workers performing services for the client required to fill out new employment applications listing the leasing company as the employer?

(P) By what method were the client's employees notified that their status had changed as a result of the leasing company's agreement with the client? Attach copy of any form or notice used in notifying employees. Were the workers formally discharged by the client and hired by the leasing company? Describe.

(Q) How does the leasing company represent itself to clients or potential clients? Attach a copy of the descriptive brochure, if available.

(R) Does the leasing company perform recruiting, interviewing, screening, or training of the workers for the client company? Describe.

(S) Can a worker be reassigned to a different job by the leasing company without the client's consent?

(T) Can a worker be placed with a client without the client's consent? Can a client engage a worker without the leasing company's consent?

(U) Who has the right to terminate a worker? The leasing company? The client? Both?

(V) Can a worker be terminated without the consent of the client? Without the consent of the leasing company?

(W) Can disciplinary action be taken by the leasing company against a worker without the consent of the client? By the client without the consent of the leasing company?

(X) Are there written rules or regulations regarding company procedure, hours of work, discipline, safety, sick leave, vacation leave, holidays, etc.? If so, who notifies the workers what these rules are? Who develops the rules? Who has the final say on the rules? What company name is affixed to the written rules?

(Y) Is an on-site supervisor utilized? If so, who employs the on-site supervisor? If the leasing company furnishes the on-site supervisor, was this individual previously engaged as a supervisor by the client? Describe the duties of the on-site supervisor(s). How many hours is the on-site supervisor present at the client's premises each day? To what extent, if any, does the leasing company actually direct the on-site supervisor in his day-to-day activities? If no on-site supervisor is used, who directs the day-to-day activities of the workers?

(Z) Who determines the workers' rate of pay? Who makes the final determination as to demotions, promotions, or raises? If the leasing company, is the client's approval required? If so, must the approval be given in advance?

(AA) Are the workers retained by the leasing company if the contract between the leasing company and the client is terminated?

(BB) What personal contacts

not already discussed do the workers have with the leasing company on a regular basis?

(CC) Upon entering the agreement with a client, does the leasing company accept all of the client's workers as its own employees? If not, which workers or categories of workers are not accepted? Why?

(DD) Is the owner of the client business treated as an employee of the leasing company?

(EE) Does the leasing company provide the workers with any benefit? (Pension, retirement, sick leave, insurance, etc.)

(FF) Are the workers members of a union or collective bargaining unit? If so, did the union ratify the agreement between the leasing company and the client? How? If not, does the union recognize the leasing company as the employer under the collective bargaining agreement? Explain.

(GG) Has any other governmental agency ruled on the status of these workers? If so, attach a copy of any such ruling.

(HH) Who claims for state and federal tax purposes the expense of preparing and processing the payroll? Who pays payroll taxes on the workers? Who reports the expenses to Internal Revenue Service?

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

Issued in Austin, Texas on August 17, 1989.

TRD-8907532

J. Ferris Duhon
Legal Counsel
Texas Employment
Commission

Effective date: September 7, 1989

Proposal publication date: June 27, 1989

For further information, please call: (512) 463-2291

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Texas Council on Alzheimer's Disease and Related Disorders

Friday, September 8, 1989, 10 a.m. The council will meet in Conference Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the revised agenda summary, the council will only change the time to 10 a.m. instead of 2:30 p.m.

Contact: Morris H. Craig, West 49th Street, Austin, Texas 78756, (512) 458-7534.

Filed: August 18, 1989, 4:08 p.m.

TRD-8907595

Texas Commission for the Blind and Texas Rehabilitation Commission

Monday, August 28, 1989 at 2:30 and Tuesday, August 29, 1989, 8:30 a.m. The State Independent Living Council will meet Monday at the Houston Multi Service Center, 1475 West Gray Street, and Tuesday at the Holiday Inn Crowns Plaza Hotel, 2222 West Loop South, Houston. According to the agenda, the council present and review a five-year plan to the executive director and commissioner of TCB and TRC; nominate new members; receive comments on the five-year plan and hear reports from TCB and TRC regarding independent living issues.

Contact: Robert Packard, P.O. Box 12866, Austin, Texas 78711, (512) 459-2588 and Mel Fajkus, 118 East Riverside Drive, Austin, Texas 78704, (512) 483-4133.

Filed: August 17, 1989, 11:19 a.m.

TRD-8907511.

Board for Lease of State- owned Lands

Tuesday, August 22, 1989, 2:30 p.m. The Board for Lease of Texas Department of

Corrections met for an emergency meeting in Room 833, General Land Office, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the board will consider nominations, terms, conditions and procedures for the October 3, 1989, lease sale. The emergency status was necessary to consider tracts to be put up at the regular lease sale on October 3, 1989, to meet the 30 day legal requirement of advertising and preparation for the sale.

Contact: Linda K. Fisher, 1700 North Congress, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: August 18, 1989, 4:07 p.m.

TRD-8907589

Monday, August 28, 1989, 10 a.m. The Board for Lease of Texas Department of Corrections will meet in Room 833, General Land Office, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the board will approve minutes of previous meeting; consider nominations, terms, conditions, and procedures for the October 3, 1989, lease sale; pooling applications.

Contact: Linda K. Fisher, 1700 North Congress, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: August 18, 1989, 4:06 p.m.

TRD-8907590

Texas State Board of Dental Examiners

Saturday, August 26, 1989, 9 a.m. The board will meet at UT Dental Branch, 7703 Floyd Curl Drive, San Antonio. According to the agenda, the board will request an extension for variance of direct supervision rule—Brenham State School and for reinstatement of II and IIN drug permits for Dr. Robert Prough.

Contact: Crockett Camp, 8317 Cross Park Drive, Suite 400, Austin, Texas 78754, (512) 834-6021.

Filed: August 17, 1989, 11:21 a.m.

TRD-8907510

State Depository Board

Tuesday, August 29, 1989, 10 a.m. The board will meet in the Office of the State Treasurer, LBJ Building, 111 East 17th Street, Austin. According to the agenda, the board will consider depository applications received.

Contact: Arne L. Schwartz, P.O. Box 12608, Austin, Texas 78711, (512) 463-5971.

Filed: August 18, 1989, 2:58 p.m.

TRD-8907574

Advisory Commission on State Emergency Communications

Monday, August 28, 1989, 9 a.m. The Regional Plan Committee will meet in the North Central Texas Council of Government's Office, 616 Six Flags Drive, Arlington. According to the agenda, the committee will recognize guest review and consider approval of North Central Texas Council of Governments' 9-1-1 regional plan, Ark-Tex Council of Governments' 9-1-1 regional plan; new business and hear public comment.

Contact: Joe Kirk, 1101 Capitol of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

Filed: August 18, 1989, 12:43 p.m.

TRD-8907566

Tuesday, August 29, 1989, 9 a.m. The Regional Plan Committee will meet in the Heart of Texas Council Government's Office, 320 Franklin Avenue, Waco. According to the agenda, the committee will call to order and recognize guests, review and consider approval of Hear of Texas Council of governments' 9-1-1 regional plan; Houston-Galveston are Council's 9-1-1 interim plan for Ft. Bend County; consider new business and hear public comment.

Contact: Joe Kirk, 1101 Capitol of Texas Highway, South B-100, Austin, Texas

78746, (512) 327-1911.

Filed: August 18, 1989, 12:43 p.m.

TRD-8907565

Employees Retirement System of Texas

Tuesday, August 29, 1989, 8 a.m. The Board of Trustees will meet in Room 401, ERS Building, 18th and Brazos, Austin. According to the agenda summary, the board will review and approve minutes; consider/act on revised investment policy and committee appointment; proposal for investment counseling services; discuss/act on Rudd & Wisdom, Inc. proposal for continued actuarial services; emergency/proposed adoption of \$65.9 set rates/approve amount of interest transferred from interest account to benefit increase reserve account; approve transfers from interest account to employees saving, retirement annuity reserve & state accumulation account; proposed internal auditing charter; emergency/final adoption of amendment to §§85.1 and 85.5; emergency/final adoption of amendment to §85.3; certify election results/appointment to group insurance advisory committee.

Contact: William S. Nail, 18th and Brazos, Austin, Texas 78701, (512) 476-6431, ext. 213.

Filed: August 18, 1989, 3:09 p.m.

TRD-8907575

Texas Employment Commission

Tuesday, August 29, 1989, 2 p.m. The commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will consider and possibly pass emergency adoption by reference of Child Labor rules of the Texas Department of Labor and Standards pursuant to House Bill 863; internal procedures of commission appeals; consider and act upon higher level appeals in unemployment compensation cases listed on commission Docket 35; and set date for next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 21, 1989, 3:02 p.m.

TRD-8907651

State Department of Highways and Public Transportation

Tuesday, August 29, 1989, 9:30 a.m. The commission will meet in Room 101 and 101A, First Floor Auditorium, Dewitt C.

Greer Building, 11th and Brazos, Austin. According to the agenda summary, the commission will conduct a public hearing on revising boundaries for 65 mph speed limits allowed by Federal Highway Administration and upon completion will meet to execute contract awards; consider decisions on presentation from public hearing dockets; staff reports/recommendation on public transportation, planning, beautification, license plate design, employee substance abuse and construction programs and projects; executive session to discuss real estate transactions and receive staff reports as necessary, be counseled on litigation including save Barton Creek Association, et al vs. FHWA, et al. Agenda is available in Room 03 of the Dewitt C. Greer State Highway Building.

Contact: Myrna Klipple, Room 203, 11th and Brazos, Austin, Texas 78701, (512) 463-8616.

Filed: August 21, 1989, 2:58 p.m.

TRD-8907650

Texas Housing Agency

Monday, August 28, 1989, 9:30 a.m. The Ad Hoc Tax Credit Committee will meet in the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will review, and possibly act on: July 18, 1989 minutes; review of 1989 allocation request chart; accepting tax credit applications for 1990, therefore establishing a pipeline of applications if the tax credit program is re-authorized by Congress for 1990; report on the National Council of State Housing Agencies Low income Tax Credit Task Force meeting on extensions of, and changes to, the low income tax credit program; applications for the 1989 low income tax credit program; and requests for commitment extensions for 1989 low income tax credit program.

Contact: Timothy R. Kenny, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: August 18, 1989, 4:38 p.m.

TRD-8907602

Monday, August 28, 1989, 10:30 a.m. The Finance and Planning Committee will meet in the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the committee will review, consider and possibly act on the following: proposed budget for fiscal year commencing September 1, 1989; request for proposal for financial advisory concerning agency's single family bond program, Series 1984A and B; financial advisors to the agency for the purpose of making recommendations.

Contact: Timothy R. Kenny, P.O. Box 13942, Austin, Texas 78711, (512) 474-2974.

Filed: August 18, 1989, 4:37 p.m.

TRD-8907601

Texas Department of Human Services

Wednesday, August 30, 1989, 10 a.m. The aged and Disabled Services Advisory Committee will meet in Conference room 6W, Sixth Floor, West Tower, 7091 West 51st., Austin. According to the agenda, the committee will approve minutes; her deputy's report; ICF/SNP: standards related to implementation of case mix reimbursement methodology; regarding resident rights; OBRA alternative disposition plan task force; adjustments to ICF-MR rates for small facilities; appropriate and inappropriate characteristics for the attendant care program of special services to be handicapped; medic-aid qualifying trusts; revision of eligibility rules for respite care; overview of respite care program; overview of in-home and family support program, other issues and business and plans for next meeting.

Contact: Mary Ann Harvey, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3194.

Filed: August 2, 1989, 47:44 a.m.

TRD-8907667

Industrial Accident Board

Monday, August 21, 1989, 9 a.m. The board met in Room 107, First Floor, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda summary, the board held an open meeting to discuss the following: adoption of board rules, 28 TAC §§43.20, 45.10, 45.13, 45.15 and 65.10; second injury claims; eleven procedural and regulatory revisions; computer acquisition; discussed health facility fee guidelines; executive session - personnel-executive director; discussed and considered personnel - executive director; reviewed board files in closed session, Texas Civil Statutes, Article 8307, §4(b); reviewed and discussed board activities.

Contact: Inez Foster, 200 East Riverside Drive, First Floor, Austin, Texas 78704.

Filed: August 17, 1989, 1:33 p.m.

TRD-8907517

State Board of Insurance

Friday, August 25, 1989, 9:30 a.m. The board will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board will consider on an emergency basis under the Insurance Code, Article 5.97(j); board orders adopting forms and/or rates applicable

to boards concerning the practice of insurance by managing general agents; concerning the practice of real estate business by realtors and others, and concerning the licensing of operators of overweight/superheavy vehicles.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 17, 1989, 3:54 p.m.

TRD-8907537

Monday, August 28, 1989, 9 a.m. The Hearing Section will meet in an emergency meeting in Room 460, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10478--application for approval of amended Articles of Agreement of Providence Lloyds, Austin, Texas. The emergency status was necessary because the docket clerk was out August 18, 1989.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:06 p.m.

TRD-8907663

Monday, August 28, 1989, 1:30 p.m. The Hearings Section will meet in for an emergency meeting in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearings section will conduct a public hearing on Docket No. 10473--to consider whether disciplinary action should be taken against William Mark Dicks, Austin, Texas, who holds a Group I, legal reserve life insurance agent's license issued by the State Board of Insurance and to consider the application of William Mark Dicks, Austin, Texas, for a solicitor's license. The emergency status was necessary because docket clerk was out August 18, 1989.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 73701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907661

Monday, August 28, 1989, 1:30 p.m. The Hearing Section will meet for an emergency meeting in Room 460, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10487--to consider the application of Genesis Capital Corporation to acquire control of Southwest First Community Life Insurance Company, Boeville, Texas. The emergency status was necessary because the docket clerk was out August 18, 1989.

Contact: O.A. Casidy, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907662

Tuesday, August 29, 1989, 1:30 p.m. The Hearing Section will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the hearing section will hear Docket No. 10491--consider the Form C disclaimer of control affiliation filed by Hoylake Investments Limited, a Bermuda company, Anglo Group plc, a company incorporated in England, General Oriental Investments Ltd, a Cayman Islands corporation, J. Rothschild Holdings plc, GORIT Holdings Limited, C.P. Investments (Singapore) Pte Ltd., a Singapore corporation, Octavian Nominees Ltd, a Guernsey, Channel Islands corporation, Turnberry Limited, a Guernsey, Channel Islands corporation, and PTC Finance Ltd., a Turks and Caicos corporation, disclaiming their control of or affiliation with Farmers Texas County Mutual Insurance company, Texas Farmers Insurance Company and Mid-Century Insurance Company of Texas, Austin, Texas, upon consummation of a tender offer for shares of B.A.T. Industries plc, a company incorporated in England, by Hoylake Investments Limited and Anglo Group plc.

Contact: James Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907654

Tuesday, August 29, 1989, 1:30 p.m. The Hearings Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10479--to consider whether disciplinary action should be taken against Dorothy Arnette Edgmon(D), doing business as Dorothy Edgmon(D) Insurance agency, Tatum, Texas, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907660

Wednesday, August 30, 1989, 9 a.m. The Hearing Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10482--to consider whether disciplinary action should be taken against Chauncey Anthony Riggins, Missouri City, Texas, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907658

Wednesday, August 30, 1989, 9 a.m. The Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10470--to consider the application for original charter of United Funeral Directors Benefit Life Insurance Company, Wichita Falls, Texas.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907659

Wednesday, August 30, 1989, 1:30 p.m. The Hearing Section will meet in Room 460, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10458--to consider whether disciplinary action should be taken against Kenneth Wayne Hudson, San Antonio, Texas, who holds a Group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

Contact: Wendy L. Ingham, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907656

Wednesday, August 30, 1989, 1:30 p.m. The Hearing Section will meet in Room 353, 1110 San Jacinto, Austin. According to the agenda, the hearing section will conduct a public hearing on Docket No. 10445--to consider whether disciplinary action should be taken against Judson W. Robinson, Jr. doing business as J. W. Robinson and Sons Insurance Agency, who holds a Group I, legal reserve life insurance agent's license and a local recording agent's license issued by the State Board of Insurance.

Contact: Earl Corbitt, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907657

Friday, September 1, 1989, 9 a.m. The Hearing Section will meet in Room 342, 1110 San Jacinto, Austin. According to the agenda, the hearing section will reopen Docket No. 10279--to consider whether disciplinary action should be taken against Lonnie B. Collett, New Braunfels, Texas, who holds a Group I, legal reserve life insurance agent's license and a Group II, life, health, and accident insurance agent's license.

Contact: Will McCann, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: August 21, 1989, 3:07 p.m.

TRD-8907655

Texas Board of Irrigators

Monday, August 28, 1989, 9 a.m. The board will meet in Room 313-P, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the board will hear and consider eight complaints; consider four complaints; discuss pending investigations of complaints filed under the Act; elect a vice-chairman; discuss §2(4) of the Act; review draft of self-evaluation report to be submitted to the sunset advisory commission; alternative approaches for revising the state exam; and the chairman will report on the status of matters of interest to the board.

Contact: Joyce Watson, 1700 North Congress, Austin, Texas, (512) 463-7990.

Filed: August 18, 1989, 10:27 a.m.

TRD-8907548

Texas State Board of Medical Examiners

Friday, August 25, 1989, 8 a.m. The Reciprocity Committee will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the board will review exam scores and reciprocity applicants; executive session under authority of Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of Attorney General 1974, No. H-484 and 6252-17.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 17, 1989, 3:41 p.m.

TRD-8907528

Friday, August 25, 1989, 8 a.m. The Finance Committee will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will discuss and approve the 1990 operating budget, request for additional personnel; FAX machine; executive session under authority of Article 6252-17 as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of the Attorney General 1974, No. H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 17, 1989, 3:42 p.m.

TRD-8907529

Friday, August 25, 1989, 8:30 a.m. The Examination Committee will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will review examination applicants and June exam results and jurisprudence examination; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of the Attorney General 1974, No. H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 17, 1989, 3:41 p.m.

TRD-8907527

Friday, August 25, 1989, 10 a.m. The Medical School Committee will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will discuss visiting medical schools; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of the Attorney General 1974, No. H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078. August 17, 1989, 3:40 p.m.

TRD-8907525

Friday, August 25, 1989, 10 a.m. The Computer Committee will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will receive progress reports and recommendations; FAX; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of the Attorney General 1974, No. H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 17, 1989, 3:40 P.M.

TRD-8907526

Friday, August 25, 1989, 10:30 a.m. The Disciplinary Process Review Committee will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will review the minutes and budget reports; point system pilot project; staffing needs; medical consultants and expert witnesses; investigate out-of-state disciplinary actions; review selected files; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of Attorney General 1974, No. H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 17, 1989, 3:40 p.m.

TRD-8907524

Friday, August 25, 1989, 11:30 a.m. The Public Information Committee will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will discuss information distribution and advertising; executive session under authority of Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1), and Opinion of Attorney General 1974, No. H-484.

Filed: August 17, 1989, 3:39 p.m.

TRD-8907523

Friday, August 25, 1989, 1 p.m. The Ad Hoc Committee on CME will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will discuss committee direction; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of Attorney General 1974, No. H-484.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 17, 1989, 3:30 p.m.

TRD-8907522

Friday, August 25, 1989, 1:30 p.m. and Saturday, August 26, 1989, 8 a.m. The board will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the board will receive the executive director's report-personnel, enforcement, licensure, computer; resolutions; rules (chapters 161, 181, 183, 187); orders; probationers; delegation; duplicate licenses; proposals for decisions; minutes; committee meetings and reports; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion of Attorney General 1974, No. H-484.

Contact: Jean Davis, P.O. Box 13562, Texas 78711, (512) 452-1078.

Filed: August 17, 1989, 3:38 p.m.

TRD-8907521

Texas Department of Mental Health and Mental Retardation

Monday, August 21, 1989, 9 a.m. The Single Portal Review Committee met for an emergency meeting in the Law Library, 909 West 45th Street, Austin. According to the agenda, the committee reviewed an application of Kerrville State Hospital; the redesignation of Tri-County MHMR Center, Sabine Valley, and Lubbock Regional MHMR Center. The emergency status was necessary because it was the only date available for the meeting prior to the end of the fiscal year.

Contact: Dennis R. Jones, P.O. Box 12668, Austin, Texas 78711, (512) 454-3761.

Filed: August 17, 1989, 1:48 p.m.

TRD-8907519

University of North Texas

Friday, August 25, 1989, 8 a.m. The Board of Regents will meet in the Diamond Eagle Suite, University Union, University of North Texas, Denton. According to the agenda, the board will approve minutes; receive small class report for summer of 1989; faculty on modified service for 1989-1990; end of semester enrollment for spring of 1989; personnel transactions; approval of tenure for new faculty appointments; supplemental promotional and tenure recommendations for 1989-1990; distinguished research professorships and regent professors; faculty development leaves; personnel transactions-university libraries; coater for interdisciplinary graduate studies; transfer of a PHD with a major in information science; transfer of department of biomedical

science from the graduate school to the college of arts and sciences; transfer of BSBS, BA, MS and PHD with a major in biochemistry from the department of chemistry to biomedical sciences; nonsubstantive change requests; policy manual; establishment of holidays; opportunity plan for higher education; enrollment management; Texas academic skills program; gift report; waiver of mandatory fees; authority to sign checks, vouchers, and other documents; allocation of proposition 2 funds for 1990; increase in music fees; 1989-1990 budget recommendation; selection of firm for energy conservation analysis; project status report; chancellor's update on events of interest to the general public--strategic planning; resolutions of appreciation for former regents; election of officers; and calendar of 1989-1990 board meetings.

Contact: Jan Dobbs, P.O. Box 131737, Denton, Texas 76203, (817) 565-2904.

Filed: August 18, 1989, 3:33 p.m.

TRD-8907581

University of North Texas/College of Osteopathic Medicine

Thursday, August 24, 1989, 10 a.m. The Budget and Finance Committee met in 213 Administration Building, University of North Texas, Denton. According to the agenda, the committee considered the gift report; authority to sign checks, vouchers, and other documents; waiver of fees' amendments to medical services; research and development plan bylaws; extension of MSRDP benefits budget for HEAF; 1989-1990 budget recommendations; report of interest earnings; proposition II transactions; internal audit plan; president's discretionary fund; athletic update; and the chancellor's accounts.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: August 18, 1989, 3:32 p.m.

TRD-8907584

Thursday, August 24, 1989, 1:30 p.m. The Role and Scope Committee met in 201 Administration Building, University of North Texas, Denton. According to the agenda, the committee considered appointments to TCOM advisory council; faculty development leave; holiday schedule; approval of purchasing manual; personnel policies and procedures manual and fiscal regulations handbook; and the Texas education opportunity plan. UNT will consider small class report, summer, 1989; faculty on modified service, 1988-1989; end of semester enrollment, spring 1989; personnel transactions; approval of manuals for new faculty appointments; supplemental promotion and tenure recommendations for 1989-1990; UNT distinguished research professorships

and regent professors; faculty development leaves; personnel transactions-libraries; center for interdisciplinary graduate studies; transfer of the PHD with a major in information science, biomedical sciences from graduate school to the college of arts and sciences; transfer of BSBC, BBA, MS, and PHD with a major in biochemistry from chemistry to the biomedical sciences; nonsubstantive change requests; UNT policy manual; 1989-1990 holidays; opportunity plan for higher education; library science offerings at Texas Tech; athletic update; report of first year, Texas Academy of Mathematics and science; and report on research; insurance issues; 1989-1990 objectives and progress.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: August 18, 1989, 3:32 p.m.

TRD-8907585

Thursday, August 24, 1989, 1:30 p.m. The Advancement Committee met in the Board Room, Administration Building, University of North Texas, Denton. According to the agenda, the committee discussed TCOM development update and UNT capital campaign options, recommendations and potential consultants for the campaign.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: August 18, 1989, 3:31 p.m.

TRD-8907586

Thursday, August 24, 1989, 3 p.m. The Facilities Committee met in the Board Room, Administration Building, Denton. According to the agenda, the committee received the TCOM project status report; development along Camp Bowis Boulevard; construction of general services building; and UNT selection of firm for energy conservation analysis; project status report, Smith Hall fire; parking garage status, Sheraton Hotel; and Fouts Field improvements.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: August 18, 1989, 3:32 p.m.

TRD-8907583

Friday, August 25, 1989, 8 a.m. The Board of Regents will meet in the Diamond Eagle Suite, University Union, University of North Texas, Denton. According to the agenda, the TCOM board will approve minutes, executive session to review applicable state laws; history of lawsuits; legislative update; Manning vs. TCOM, et al; Rounzavilla vs. Gallenough & Stern; possible contractual arrangement with Fort Worth cultural district; facility disciplinary issues; maxicare bankruptcy; update on current lawsuits; Sheraton Hotel; specific communication disorders with personnel issue; internal audit personnel issues; specific administrative appointment; specific compensation issues for administrators; ap-

pointment to advisory council; facility development leave; holiday schedule; approval of purchasing manual; personnel policies and procedures manual; fiscal regulations handbook; education opportunity plan; gift report; authority to sign checks, vouchers, and other documents; waiver of mandatory fees; amendment to medical services; research and development bylaws; extension of MSTFP benefits; budget for HEAF fund; 1989-1990 budget recommendations; project status report; president's update on events of interest to general public--new facility and administrator and clinical affiliations freshman class.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 565-2904.

Filed: August 18, 1989, 3:33 p.m.

TRD-8907582

Board of Pardons and Paroles

Tuesday, August 29, 1989, 9 a.m. The board will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider and act on the following items: minutes of August 1 and 2, 1989, meeting; budget; ITMC report; Bexar County facility contract; halfway house contract renewals; work program contract; delegation of authority of issuing PPT warrants; ratification of memorandums; disciplinary cases; rescission TP-2 dates; delegation of authority to administrative commissioner; special review pilot project; parole panel substitutions; Federal Drug Free Workplace Act of 1983; Rule 1145.44-procedures after waiver of preliminary hearing; deputy director's position and executive director's report.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-7249.

Filed: August 18, 1989, 4:27 p.m.

TRD-8907596

Tuesday, August 29, 1989, 1:30 p.m. The board will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will meet to consider executive clemency recommendations and related actions (other than OU of Country Conditional Pardons), including: full pardons/restoration of civil rights of citizenship; emergency media reprieves; commutations of sentence; and other reprieves, remissions and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-7249.

Filed: August 18, 1989, 4:26 p.m.

TRD-8907598

Monday-Friday, August 28, 1989, September 1, 1989, 1:30 p.m. daily except on Friday, and then 11 a.m. The Board Panel (3 board members) will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will receive, review and consider information and reports concerning prisoners/existees and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: K. Armstrong, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-22713.

Filed: August 18, 1989, 4:27 p.m.

TRD-8907597

Texas State Board of Public Accountancy

Wednesday, August 30, 1989, 1 p.m. Public Hearing will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the hearing will be on complaint number 83-01-3L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: August 21, 1989, 10:29 a.m.

TRD-8907637

Thursday, August 31, 1989, 9 a.m. The Public Hearing will conduct a hearing on complaint number 83-09-12L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: August 31, 1989, 10:29 a.m.

TRD-8907636

Public Utility Commission of Texas

Wednesday, September 6, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will conduct a prehearing conference on Docket No. 8994—application of Guadalupe-Blanco River Authority for approval of tariff sheets to reflect operation of the Canyon Dam hydroelectric project.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 21, 1989, 3:58 p.m.

TRD-8907664

Thursday, September 7, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will conduct a hearing on the merits of Docket No. 8873—application of Cap Rock Telephone Company, Inc., to establish direct inward dialing service.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 17, 1989, 4:01 p.m.

TRD-8907533

Monday, September 25, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will conduct a prehearing conference on Docket No. 8984—complaint of Don Eaves and World Telephone and Tele Marketing, Inc. against AT&T Communications of the Southwest, Inc.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 17, 1989, 4:02 p.m.

TRD-8907531

Wednesday, October 4, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will hold a hearing on Docket No. 8911—application of Southwestern Bell Telephone Company to change tariff.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 18, 1989, 3:23 p.m.

TRD-8907576

Wednesday, October 11, 1989, 10 a.m. The Hearings Examiner will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will hear the merits on Docket No. 8915—application of Laka Dallas Telephone Company to discontinue offering mobile telephone service.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 17, 1989, 4:03 p.m.

TRD-8907530

Monday, November 6, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will hold a hearing rescheduled from Monday, October 1, 1989, on the merits of Docket No. 8395—petition for declaratory judgment and relief of AT&T Communications of the Southwest, Inc. against Southwestern Bell Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 17, 1989, 4:01 p.m.

TRD-8907534

Thursday, November 9, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin.

According to the agenda the meeting has been rescheduled from November 6, 1989, 10 a.m., the hearings division will conduct a hearing on Docket No. 8395—petition for declaratory judgment and relief of AT&T Communications of the Southwest, Inc. against Southwestern Bell Telephone Company.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 21, 1989, 3:58 p.m.

TRD-8907665

Monday, November 13, 1989, 1 p.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will conduct a hearing on the merits of Docket No. 8987—report of Industry Telephone Company, sale of common stock.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 17, 1989, 4 p.m.

TRD-8907536

Thursday, November 30, 1989, 1:30 p.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will hold a second prehearing conference on Docket No. 8813—complaint of Erickson Refining corporation against Gulf States Utilities regarding billing dispute.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 16, 1989, 1:26 p.m.

TRD-8907482

Monday, December 18, 1989, 10 a.m. The Hearings Division will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearings division will conduct a hearing on the merits of Docket No. 8985—application of Central Telephone Company of Texas to withdraw minimum monthly usage charge for switched access facilities.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 17, 1989, 4:02 p.m.

TRD-8907533

Railroad Commission of Texas

Monday, August 28, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Agendas follow.

The commission will consider and act on the Administrative Services Division director's report on division administration, budget, procedure, and personnel matters. Discussion of the development of a natural gas clearing house that would match companies that need gas to fuel new plants with producers that have gas to sell-possible action.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: August 18, 1989, 11:11 a.m.

TRD-8907563

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: August 18, 1989, 11:11 a.m.

TRD-8907560

The commission will consider and act on the executive director's report on commission budget and fiscal matters, administrative and procedural matters, personnel and staffing, state and federal legislation, and contracts and grants. Consider reorganization of various commission divisions; consolidation of positions; and appointment, reassignment and/or termination of various positions, including division directors. Consideration of reorganization of the well plugging program. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline and/or dismissal of personnel.

Contact: Cus D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: August 18, 1989, 11:11 a.m.

TRD-8907559

The commission will consider and act on the Flight Division director's report on division administration, budget, procedures and personnel matters.

Contact: Ken Fosler, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6787.

Filed: August 18, 1989, 11:11 a.m.

TRD-8907558

The commission will consider and act on the Office of Information Services/Office of Research and Statistical Analysis Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78753, (512) 463-6710.

Filed: August 18, 1989, 11:11 a.m.

TRD-8907561

The commission will consider and act on the Investigation Division director's report

on division administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

Filed: August 18, 1989, 11:11 a.m.

TRD-8907562

The commission will consider category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: August 18, 1989, 11:12 a.m.

TRD-8907557

The commission will consider and act on the Personnel Division director's report on division administration, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: August 18, 1989, 11:12 a.m.

TRD-8907556

The commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Cus D. Boykin, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: August 18, 1989, 11:12 a.m.

TRD-8907555

Texas Savings and Loan Department

Wednesday, August 30, 1989, 9 a.m. The department will meet in Suite 201, 2601 North Lamar, Austin. According to the agenda summary, the purpose of this meeting is to accumulate a record of evidence in regard to the application of Columbia Savings Association to relocate a loan office from 12012 Wickchester, Suite 200, Houston, Texas to 9525 Katy Freeway, Houston, Texas and from which record the commissioner will determine whether to grant or deny the applications.

Contact: Laura M. Hale, Suite 201, 2601 North Lamar, Austin, Texas 78704, (512) 479-1250.

Filed: August 18, 1989, 12:35 p.m.

TRD-8907564

Texas Southern University

Friday, September 1, 1989, 10 a.m. The Board of Regents will meet in the University Library, Fifth Floor, Texas Southern University, Houston. According to the agenda, the board will consider: minutes, budget changes, investments, budgets for restricted and/or grants, project funds, construction change orders, payment to architects, contractors, and engineers; authorization and ratification of contracts and awards, review of ongoing construction and current contractual relations; personnel actions; report on programs of academic activities and programs; report from the president and executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: August 17, 1989, 3:50 p.m.

TRD-8907538

Texas State University System

Thursday, August 24, 1989, 2 p.m. The Building Committee met in the First Floor Conference Room, Houston Harris University Center, Angelo State University, San Angelo. According to the agenda, the board reviewed construction projects and documents for the four universities in the system including action on: consultant for the Thomason Building modification, purchase order for carpet replacement in the teacher education center at Sam Houston University; asbestos removal from Laurel Hall, preliminary plans for the J. C. Kellan Building renovation and health science building and San Marcos Hall at Southwest Texas State University. (Where appropriate and permitted by law, executive sessions may be held for the above listed subjects.)

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 18, 8:23 a.m.

TRD-8907543

Thursday, August 24, 1989, 3 p.m. The Curriculum Committee, met in the First Floor Conference Room, Houston Harris University Center, Angelo State University, San Angelo. According to the agenda, the committee reviewed curriculum needs and requests for the four universities in the system including: 12th and fourth day class reports; new degree programs or changes; new course offerings; course deletions and changes; off campus, out-of-state and out-of-country course offerings and admission standards.

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 18, 1989, 8:23 a.m.

TRD-8907541

Thursday, August 24, 1989, 3:30 p.m. The Finance Committee met in the First Floor Conference Room, Houston Harte University Center, Angelo State University, San Angelo. According to the agenda, the committee reviewed financial matters of the system office and the four universities in the system including: operating budgets for fiscal years 1989-1990 for Angelo State, Sam Houston State, Southwest Texas State, and Sul Ross State Universities.

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 18, 1989, 8:23 a.m.

TRD-8907540

Thursday, August 24, 1989 4 p.m. and Friday, August 25, 1989, 9:30 a.m. The Board of Regents met in the First Floor Conference Room, Houston Harte University center, Angelo State University, San Angelo. According to the agenda summary, the board reviewed matters and the four universities in the system including: all matters reviewed by the building, curriculum, finance committees and submitted to the full board; personnel actions including new employees, promotions, resignations, terminations, and special appointment for any system employee including presidents and executive director; budgetary changes at each university and the system office; contract approvals at each university and the system office, acceptance of gifts; admission requirements, fees, selection of bond counsel and financial advisor; naming of the SHSU stadium and approval of group insurance rates.

Contact: Lamar Urbanovsky, 505 Sam Houston Building, Austin, Texas 78701, (512) 463-1808.

Filed: August 18, 1989, 8:23 A.M.

TRD-8907542

University of Texas Health Science Center at Houston

Wednesday, August 23, 1989, 1 p.m. The Animal Welfare Committee, Medical School, met in G.018 Conference Room, Medical School Building, Houston. According to the agenda summary, the committee reviewed presentation of protocol by protocol review group; subcommittee reports on animal care facilities, program; policy and community affairs; discussed-protocol no. AWC-MS-86-130-B, no. AWC-MS-86-117 and the annual reviews.

Contact: Kathleen M. Ross, P.O. Box 20708, Houston, Texas 77225.

Filed: August 17, 1989, 1:12 p.m.

TRD-8907516

University of Texas System, M. D. Anderson Cancer Center

Tuesday, August 22, 1989, 10 a.m. The Institutional Animal Care and Use Committee met in Conference Room AW7.707, Seventh Floor, M.D. Anderson Cancer Center, 1515 Holcombe, Boulevard, Houston. According to the agenda summary, the committee reviewed protocols for animal care, use and modifications thereof.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-8328, (512) 499-4402.

Filed: August 17, 1989, 1:12 p.m.

TRD-8907515

Texas Water Commission

Tuesday, August 22, 1989, 2 p.m. The commission met in Room 123, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission considered the executive director's report on administration, policy, budget procedures, and personnel matters.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 463-7909.

Filed: August 21, 1989, 11:20 a.m.

TRD-8907648

Tuesday, August 29, 1989, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the revised agenda summary, the board will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date of time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: August 18, 1989, 11:05 a.m.

TRD-8907552

Tuesday, September 12, 1989, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will conduct a hearing to determine whether to affirm, modify, or set aside Emergency Order 89-32E issued August 7, 1989, to Beacon Util-

ity Corporation; the order requires Beacon to immediately provide continuous and adequate water and sewer service to every customer within Beacon's certified service area as set forth in water certificate of convenience and necessity Number 11854, covering Beacon Estates Subdivision in Waller County, Texas.

Contact: Christopher G. Gee, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: August 18, 1989, 1:24 p.m.

TRD-8907567

Tuesday, September 19, 1989, 9 a.m. The Hearings Examiners will meet in the Council Chambers, Kaufman City Hall, 209 South Washington, Kaufman. According to the agenda summary, the board will conduct a meeting rescheduled from Tuesday, September 12, 1989, concerning the City of Kaufman, who has applied to the commission for an amendment to Permit No. 12114-01 to authorize disposal of sludge on city-owned land and/or contracted land; the proposed amendment would also add effluent limitations for minimum dissolved oxygen concentration. Effective April 1, 1992, the proposed amendment would make the following changes in the effluent limitations: replace 20 mg/l biochemical oxygen demand with 10 mg/l carbonaceous biochemical oxygen demand; revise total suspended solids and minimum dissolved oxygen concentration from 20 mg/l and 2 mg/l to 15 mg/l and 4 mg/l, respectively and add ammonia nitrogen.

Contact: Angela Demerle, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: August 18, 1989, 11:05 a.m.

TRD-8907551

West Texas State University

Tuesday, August 29, 1989, 9 a.m. The Board of Regents will meet in Room 317, Old Main Building, West Texas State University, Canyon. According to the agenda summary, the board will discuss bylaws; elect officers; hear report of committee to study merger issue and action thereon; student center building name; finance and administrative service items; Panhandle-Plains historical museum items; academic affairs; executive session; hearing on appeal-for Leon Trezell and Dr. Philip Isett.

Contact: Texas Smith, Canyon, Texas 79016, (806) 656-2100.

Filed: August 21, 1989, 3:33 p.m.

TRD-8907652

Regional Meetings

Meetings Filed August 17, 1989

The Barton Springs/Edwards Aquifer Conservation District, Board of Directors met at 96 San Jacinto, Suite 1800, Ricksstaff, Heath and Smiley, Austin, August 21, 1989, at 8 a.m. Information may be obtained from Bill E. Couch.

The Dewitt County Appraisal District, Appraisal Review Board met at 103 Bailey Street, Cuero, August 22, 1989, at 9 a.m. Information may be obtained from John Halburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Jasper County Appraisal District, Board of Directors will meet Kirbyville CISD Administration Building, 206 East Main, Kirbyville, August 31, 1989, at 7 p.m. Information may be obtained from David W. Luther, Jasper County Appraisal District, County Courthouse Annex, Jasper, Texas 75951, (409)384-2544.

The Lavaca County Central Appraisal District, Appraisal Review Board will meet at 113 North Main, Hallettsville, August 28, 1989, at 9 a.m. Information may be obtained from Diane Munson, P.O. Box 346, Hallettsville, Texas 77964, (512) 798-4396.

The Neches River Authority Board of Directors met at Staghorn Inn, Three Rivers, August 24, 1989, 11 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802, (512) 278-6810.

The Panhandle Ground Water Conservation District #3 Board of Directors met at Water District Office, 300 South Omohundro Street, White Deer, August 22, 1989, 8 p.m. Information may be obtained from Gary L. Walker, P.O. Box 637, White Deer, Texas, (806) 883-2501.

The San Jacinto River Authority, Board of Directors met at 1300 Post Oak Boulevard, Suite 1400, Houston, August 23, 1989, at 10 a.m. Information may be obtained from Jack K. Ayer, P.O. Box 320, Conroe, Texas 77305, (409) 588-1111.

The West Central Texas Municipal Water District, will meet at 401 Cypress Street, Suite 300, Abilene, August 31, 1989, 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254.

TRD-8907509

Meetings Filed August 18, 1989

The Capital Area Rural Transportation System (CARTS), Board of Directors met in Conference Room, 5111 East First Street, Austin, August 24, 1989, 9:30 a.m. Information may be obtained from Edna M. Burroughs, 5111 East First Street, Austin,

Texas 78702, (512) 389-1011.

The Heart of Texas Region MHMR, Board of Directors met at 110 South 12th Street, Waco, August 24, 1989, 11:45 a.m. Information may be obtained from Helen Jasso, 110 South 12th Street, Waco, Texas 76701, (817) 752-3451.

The Lower Colorado River Authority, Board of Directors met at 3700 Lake Austin Boulevard, Austin, August 24, 1989, 8:30 a.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Audit and Budget Committee met at 3700 Lake Austin Boulevard, Austin, August 23, 1989, 9 a.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Finance and Administration Committee met at 3700 Lake Austin Boulevard, Austin, August 23, 1989, 9 a.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Energy Operations Committee met at 3700 Lake Austin Boulevard, Austin, August 23, 1989, 9 a.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Natural Resources Committee met at 3700 Lake Austin Boulevard, Austin, August 23, 1989, 9 a.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Planning and Public Policy Committee met at 3700 Lake Austin Boulevard, Austin, August 23, 1989, 9 a.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Planning and Public Policy Committee/Energy Operations Committee met at 3700 Lake Austin Boulevard, Austin, August 24, 1989, 1:30 p.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Lower Colorado River Authority, Planning and Public Policy Committee/Natural Resources Committee met at 3700 Lake Austin Boulevard, Austin, August 22, 1989, 1:30 p.m. Information may be obtained from General Counsel, P.O. Box 220, 3700 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-3250.

The Mason County Appraisal District, will meet at 206 Fort McKavit Street, Ma-

son, August 28, 1989, at 7 p.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856.

The Mason County Appraisal District, will meet at 206 Fort McKavit Street, Mason, August 28, 1989, at 7:30 p.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856.

TRD-8907539

Meetings Filed August 18, 1989

The Dallas Area Rapid Transit, Procurement Ad Hoc Committee met at 601 Pacific Avenue, Dallas, August 22, 1989, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit, Mobility Impaired Committee met at 601 Pacific Avenue, Dallas, August 22, 1989, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202 (214) 658-6237.

The Dallas Area Rapid Transit, Operations Committee met at 601 Pacific Avenue, Dallas, August 22, 1989, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Area Rapid Transit, Board of Directors met at 601 Pacific Avenue, Dallas, August 22, 1989, at 6:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Lower Rio Grande Valley Development Council, Board of Directors met in the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, August 24, 1989, at 1:30 p.m. Information may be obtained from Ken Jones or Robert A. Chandler, 4900 North 23rd Street, McAllen, Texas 78504, (512) 682-3481.

The North Central Texas Council of Governments, Executive Board met on the Second Floor, Centerpoint Two, 616 Six Flags Drive, Arlington, August 24, 1989, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

The North Central Private Industry Council, Inc., will meet in Room 215, Wichita Falls Activities Center, 10th and Indiana, Wichita Falls, August 30, 1989, at 12:15 p.m. Information may be obtained from Art Frenich, 4515 Allendale Road, Wichita Falls, Texas 76310, (817) 691-0020.

TRD-8907539

**Meetings Filed August 21,
1989**

The Gregg Appraisal District, Board of Directors will meet at 2010 Gilmer Road, Longview, August 30, 1989, at 9 a.m. Information may be obtained from Wm. T. Carroll, P.O. Box 6700, Longview, Texas 75606, (214) 759-0015.

The Gulf Bend Mental Health Mental Retardation Center, Board of Trustees met at the Gulf MHMR Center, 1404 Village Drive, Victoria, August 24, 1989, at 12 noon. Information may be obtained from Bill Dillard, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611.

The Gulf Bend Mental Health Mental Retardation Center, Board of Trustees met in the Gulf Bend MHMR Center, 1404 Village Drive, Victoria, August 24, 1989, at 12 noon. Information may be obtained from Bill Dillard, 1404 Village Drive, Victoria, Texas 77901, (512) 575-0611.

The Northeast Texas Municipal Water District, Board of Directors will meet on Highway 250 South, Hughes Springs, August 28, 1989, at 10 a.m. Information may be obtained from J. W. Dean, P.O. Box 933, Hughes Springs, Texas 75656, (214) 639-7538.

The Palo Pinto Appraisal District, Board of Directors-Budget Hearing will meet in the County Courthouse, Palo Pinto, August 29, 1989, at 3 p. m. Information may be obtained from Jack F. Sanford, P.O. Box 250, 76072, (817) 659-1234.

The Palo Pinto Appraisal District, Board of Directors will meet in the County Courthouse, Palo Pinto, August 29, 1989 at 3:15 p.m. Information may be obtained from Jack Sanford, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-1234.

The Region 14 Education Service Center, Board of Directors will meet at 1850 State Highway 351, Abilene, August 31, 1989, at 5:30 p.m. Information may be obtained from Teresa Hury, Rt. 1, Box 70-A, Abilene, Texas 79601, (915) 676-8201.

The RiceLand Regional Mental Health Authority, met at 3007 North Richmond Road, Wharton, August 24, 1989, at 11:30 a.m. Information may be obtained from Bascomb L. Hodges, 3007 North Richmond Road, Wharton, Texas 77488, (409) 532-3098.

The San Antonio-Bexar County Metropolitan Planning Organization, Steering Committee will meet in the Basement Conference Room, San Antonio City Hall, Military Plaza, San Antonio, August 28, 1989, at 1:30 p.m. Information may be obtained from David F. Pearson, Room 101, Bexar

County Courthouse, San Antonio, Texas 78205-3002, (512) 227-8651.

The South Plains Rural Rail Transportation District, Board of Directors met for an emergency meeting in SPAG offices, 1523 38th Street, Lubbock, August 23, 1989, at 10 a.m. Information may be obtained from Tim C. Pierce, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452, (806) 762-8721.

The Texas Rural Communities, Board of Directors will meet at 314 Highland Mall Boulevard, Austin, September 7, 1989, at 9 a.m. Information may be obtained from Leslie Jenca, 314 Highland Mall Boulevard #103, Austin, Texas 78752.

TRD-8907603



The Texas Council Risk Management Fund, Ad Hoc Committee will meet in Suite 210, Joseph Ivy Company, 7800 North Mopac, Austin, August 31, 1989, at 9 a.m. Information may be obtained from Spencer McClure, 7700 Chevy Chase Drive, Suite 310, Austin, Texas 78746, (512) 459-9062.

TRD-8907668



In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Air Control Board Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, Texas Civil Statutes, Article 4477-S, §3.09; 40 Code of Federal Regulations, 51.102 of the United States Environmental Protection Agency (EPA) regulations concerning state implementation plans (SIP); the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and the Texas Air Control Board (TACB) procedural rules, §103.11(4), TACB will conduct public hearings to receive testimony on proposed revisions to TACB Regulation I and the general rules.

The changes to Regulation I are proposed primarily in response to House Bill 2468, which was enacted by the 71st Texas Legislature, and requires TACB to develop provisions for controlling commercial infectious waste incinerators. In addition, limits are specified for other multiple-chamber incinerators in order to improve enforceability and define equivalency requirements for single-chamber incinerators. The amendments to the general rules concern definitions in support of the expanded incinerator requirements. The TACB is also soliciting comments on several existing related definitions. The agency is seeking comments on whether the existing definitions continue to be appropriate.

Public comments, both oral and written, on the proposals are invited at hearings which will be held at the following times and places: September 21, 1989, 10 a.m., Texas Air Control Board Auditorium, 6330 Highway 290 East, Austin; and September 21, 1989, 7 p.m., City of Houston Pollution Control Building Auditorium, 7411 Park Place Boulevard, Houston.

The hearings are structured for receipt of narrative comments. Interrogation or cross-examination is not permitted. Persons desiring to testify at the hearing should examine materials on file beforehand and prepare statements for presentation at the hearing.

Written comments not submitted at a hearing may be submitted to the TACB central office in Austin prior to and including September 22, 1989. Comments received by 4 p.m. on that date will be considered prior to any final action on the proposed revisions. Five copies of all written comments are requested.

Copies of the proposals are available for inspection at the TACB central office and at all regional offices. For further information, contact Betty Rogers at (512) 451-5711.

Issued in Austin, Texas on August 17, 1989.

TRD-8907483 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: August 16, 1989

For further information, please call: (512) 451-5711, ext. 354

Notice of Fuel Oil Surcharge

Senate Bill 769, passed by the Texas State Legislature and signed by the Governor on June 16, 1989, amends the Texas Clean Air Act to establish a state clean fuel incentive surcharge of \$.20 per million Btu on fuel oil used between April 15 and October 15 of each year in industrial and utility boilers capable of using natural gas. This legislation is applicable to all boilers located in consolidated metropolitan statistical areas (CMSA) or metropolitan statistical areas (MSA) with populations of 350,000 or more which have not met the federal ambient air quality standards for ozone. These areas include the Dallas/Fort Worth CMSA, the Houston/Galveston CMSA, the Beaumont/Fort Arthur MSA, and the El Paso MSA. Exemptions from this surcharge may be available for the following circumstances: approved burning of waste oils, used oils, and hazardous waste-derived oils for purposes of energy recovery or disposal; fuel oil use during periods of full or partial natural gas curtailment or during periods when insufficient natural gas is available to satisfy contractual obligations; limited fuel oil use in equipment testing or personnel training; and fuel oil use under a fixed price contract with a public works agency entered into prior to the effective date of this legislation.

The effective date of this legislation is August 28, 1989. Therefore, the surcharge for 1989 will apply to fuel oil used from that date until October 15, 1989. The TACB staff is preparing draft rule language which would specify the requirements and mechanism for collecting this surcharge and will present the matter to the board's Regulation Development Committee for consideration of formal rulemaking as soon as practicable. For further information, please contact Lane Hartscock, Regulation Development Section, (512) 451-5711.

Issued in Austin, Texas, on August 21, 1989.

TRD-8907028 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: August 21, 1989

For further information, please call: (512) 451-5711, ext. 354

Request for Proposal

Notice of Invitation for Proposals. The Texas Air Control Board (TACB) is soliciting proposals from interested parties to evaluate classified synoptic weather patterns and their relationships to ground-level ozone concentrations in the Houston area. The TACB will receive proposals until 5 p.m., August 31, 1989. Proposals need not be a formal commitment on the part of the proposer's organization to perform the work; they should contain a statement of suggested approach and a statement of qualifications of the principal persons who would be performing the work if it is undertaken. This project is anticipated to be funded in the range of approximately \$1,000 to \$3,000.

The results of the evaluation will be used to assist in determining if synoptic weather patterns are consistently related to high concentrations of ground-level ozone. If certain weather patterns are associated with high ozone concentrations, their year-to-year variations in the frequency of occurrence of these weather patterns can be examined and taken into account to better understand trends in the ozone data. In addition, identifying weather patterns related to high ozone concentrations may assist the TACB in forecasting ozone episodes and in selecting typical days for detailed photochemical modeling to evaluate control strategies. All work must be completed and delivered to the TACB by September 30, 1989.

Description of Services. The purpose of the contract is to evaluate how effectively synoptic weather patterns can be related to ground-level ozone concentrations in the Houston area. Synoptic weather patterns classified into one of 10 possible classes for each day of the year for a maximum of eight years during the period 1980-1987 will be provided to the contractor. In addition, ozone concentration data from the Houston area TACB and City of Houston monitors will also be provided in computer-readable formats. The contractor will review the methodology used to determine the weather pattern classes and provide recommendations for changes. The contractor will also provide statistics on the frequency of occurrence of weather pattern classes for each year and month. In addition, the contractor will perform a statistical analysis of the relationship between weather pattern classes and measurements of ozone concentration in the Houston area for the data covering the period 1980-1987. The contractor will evaluate, from the statistical analyses, how closely the various weather patterns are associated with ozone concentrations. The statistical analyses shall be described in detail. If such associations are found, the contractor shall suggest a methodology for assessing trends in the ozone data taking into account year-to-year and seasonal variations in the frequency of occurrence of the various weather patterns. Because of the limited contract period, proposals to carry out a portion of this work will be considered.

A final report on the analyses of the weather pattern classes and the ground-level ozone concentrations shall be completed and delivered to the TACB by September 30, 1989.

Procedure for Awarding Contract. The TACB shall select and award such contract and engage such services on the basis of demonstrated competence, qualifications, and availability of resources to perform the proposed work and on the anticipated usefulness of the work products of the contract. The TACB agrees to receive proposals only under the condition that they shall become public after 5 p.m., August 31, 1989, and that they are submitted free of charge to the TACB and free from any obligation on the part of the TACB. Moreover, the proposer must provide adequate assurance that release of the proposal will not violate any rights of confidentiality or other property rights. The TACB may choose to enter into one or no contract as a result of this request for proposal.

Contact Person. Proposals or requests for additional information should be directed to James H. Price, Jr., Ph.D., Director, Research Division or Keith Zimmermann, P.E., Chief, Atmospheric Sciences Section, Research Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas, 78723, (512) 451-5711.

Issued in Austin, Texas, on August 21, 1989.

TRD-8907634
Allen El Bell
Executive Director
Texas Air Control Board

Filed: August 21, 1989

For further information, please call (512) 451-5711, ext. 354

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**Texas Commission on Alcohol and
Drug Abuse**
Notice of Public Hearings

The Texas Commission on Alcohol and Drug Abuse will hold public hearings on cost-control guidelines for chemical dependency treatment under group health insurance plans and health maintenance organizations. Senate Bill 911, passed by the 71st Legislature, requires that group health policies cover drug and alcohol treatment in the same manner as all physical illness.

Seven public hearings have been scheduled at the following times and places: August 23, 1989, 9 a.m., Arlington, Center Point Two Building, Second Floor Executive Board Room; August 24, 1989, 9 a.m., El Paso, The Centre, Room 210, 123 Pioneer Plaza; August 25, 1989, Lubbock, Mahon Library, Mahon Community Room, 1306 Ninth Street; August 29, 1989, 9 a.m., Houston, Kapitner Building, Fourth Floor Conference Room, 3555 Timmons Lane; August 31, 1989, 10 a.m., Tyler, City Council Chamber, City Hall, 210 North Bonner; September 6, 1989, 9 a.m., San Antonio, Atlee Ayers Building, Room 420, 118 Broadway; September 13, 1989, 9 a.m., Austin, John H. Reagan Building, Room 104, 15th and Congress.

All written and oral comments will be considered in developing cost-control standards. Additional information may be obtained from the Texas Commission on Alcohol and Drug Abuse, Bob Dickson, Executive Director, 1705 Guadalupe Street, Austin, Texas 78701-1214, (512) 463-5510; contact person: Paul Roberts.

Issued in Austin, Texas on August 17, 1989.

TRD-8907644
Bob Dickson
Executive Director
Texas Commission on Alcohol and Drug
Abuse

Filed: August 18, 1989

For further information, please call: (512) 463-5510

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Department of Banking
Notice of Postponement of Hearing

The August 18, 1989, hearing on the application to withdraw excess earnings from trust deposits filed by Deoppenschmidt Funeral Home, New Braunfels, has been postponed and rescheduled for September 28, 1989.

Additional information may be obtained from Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on August 17, 1989.

TRD-8907620
Ann Graham
General Counsel
Department of Banking

Filed: August 17, 1989

For further information, please call: (512) 479-1200

State Banking Board Notice of Hearings

The hearing officer of the State Banking Board will conduct a hearing on September 18, 1989, at 2 p.m., at 2601 North Lamar Boulevard, Austin, on the charter application for Victoria Bank & Trust Company-West, New Braunfels. The application is a conversion application from the New Braunfels National Bank, New Braunfels, to a state-chartered bank.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on August 17, 1989.

TRD-8907579 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: August 18, 1989

For further information, please call: (512) 479-1200

The hearing officer of the State Banking Board will conduct a hearing on September 18, 1989, at 9 a.m., at 2601 North Lamar Boulevard, Austin, on the charter application for Victoria Bank & Trust Company-Central, Gonzales. The application is a conversion application from the First National Bank of Gonzales, Gonzales, to a state-chartered bank.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on August 17, 1989.

TRD-8907579 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: August 18, 1989

For further information, please call: (512) 479-1200

Comptroller of Public Accounts Request for Proposals

Description. The Comptroller of Public Accounts solicits proposals from qualified contractors to provide assistance in the implementation of the accounting component of the Uniform Statewide Accounting System (USAS) consistent with the design approved by the Uniform Statewide Accounting System Committee. The objective of the USAS implementation project is to have an operational integrated financial management information system to be used by state officials and over 200 separate state agencies in an automated and distributed telecommunications network environment by September 1, 1991.

Proposals are due by 5 p.m., September 29, 1989. It is the Comptroller's intent to award the contract(s) to the successful contractor(s) on or about October 18, 1989.

Requests for a copy of this request for proposal must be made to: Tom Lauer, USAS Project Manager, State Government Accounting Division, Comptroller of Public Accounts, 111 East 17th Street, Room 908, Austin, Texas 78774, (512) 463-4808.

The Comptroller will hold an optional bidders conference to afford bidders a structured question and answer forum to obtain any additional clarification they need regarding the request for proposal. The conference will be held at the William B. Travis Building, 1701 North Congress Avenue, Room 1.111, Austin, on Wednesday, September 6, 1989, from 8:30 a.m. to 12 Noon.

Issued in Austin, Texas, on August 18, 1989.

TRD-8907577 Wade Anderson
Executive Counsel
Comptroller of Public Accounts

Filed: August 18, 1989

For further information, please call: (512) 463-4852

Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Corpus Christi	Bobcat Racing, Inc.	L04334	Corpus Christi	0	07/21/89
Houston	Roche Biomedical Laboratories, Inc.	L04294	Houston	0	07/17/89
Throughout Texas	Aluminum Company of America	L04316	Rockdale	0	07/17/89

AMENDMENTS TO EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Amarillo	Northwest Texas Hospital	L02054	Amarillo	31	07/27/89
Arlington	National Safety Consultants	L04027	Arlington	5	07/27/89
Austin	AMBION, Inc.	L04307	Austin	1	07/05/89
Baytown	Baytown Technical School	L03878	Baytown	6	07/12/89
Beaumont	Sandoz Crop Protection Corporation	L02016	Beaumont	9	07/16/89
Beaumont	Mobil Chemical Company	L02316	Beaumont	16	07/18/89
Brenham	Trinity Community Medical Center of Brenham	L03419	Brenham	9	07/27/89
Bryan	St. Joseph Hospital and Health Center	L00573	Bryan	29	07/27/89
Cleburne	Texas Lins Company	L03988	Cleburne	3	07/18/89
College Station	Biophor Corporation	L04233	College Station	3	07/19/89
Dallas	Animal Radiology Clinic	L03535	Dallas	3	07/27/89
Dallas	Southern Methodist University	L00443	Dallas	14	07/27/89
El Paso	Ansell Incorporated	L04214	El Paso	1	07/21/89
El Paso	Syncor International Corporation	L01999	El Paso	65	07/24/89
El Paso	The University of Texas at El Paso	L00159	El Paso	23	07/20/89
El Paso	Providence Memorial Hospital	L02353	El Paso	33	07/27/89
Fort Worth	Texas College of Osteopathic Medicine	L02518	Fort Worth	13	07/24/89
Houston	General Welding Works, Inc.	L02895	Houston	19	07/12/89
Houston	GeoChem Research, Inc.	L03448	Houston	5	07/20/89
Houston	St. Joseph Radiology Associates	L03439	Houston	3	07/27/89
Houston	Cypress Fairbanks Medical Center, Inc.	L03424	Houston	16	07/27/89
Houston	Memorial Care System	L00439	Houston	37	07/27/89
Houston	St. Joseph Hospital	L02279	Houston	27	07/27/89
Houston	Houston Northwest Medical Center	L02253	Houston	30	07/13/89
Houston	Osteoporosis Diagnostic Center of Houston	L03728	Houston	6	07/24/89

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Jourdanton	Atascosa Mining Company	L03041	Jourdanton	6	07/20/89
Kaufman	Presbyterian Hospital of Kaufman	L03337	Kaufman	8	07/24/89
Kosse	U. S. Silica Company	L03150	Kosse	5	07/13/89
Lona Star	Precision Tubular Inspection, Inc.	L04164	Lona Star	1	07/18/89

Lufkin	Memorial Medical Center of East Texas
Odessa	Baxene Products Company
Orange	Chevron Chemical Company
Pasadena	Humana Hospital Southmore
Plano	HCA Medical Center Plano
Port Arthur	Park Place Hospital
Richmond	Polly Ryan Memorial Hospital
San Angelo	Angelo Community Hospital
San Antonio	QSystems, Inc.
San Antonio	Brant S. Mittler, M.D., P.A.
San Antonio	R. Snip and Associates
San Antonio	Humana Hospital San Antonio
San Antonio	St. Mary's University
San Antonio	Cancer Therapy and Research Center
San Antonio	Beta Diagnostics, Inc.
San Antonio	The U.T. Health Science Center at San Antonio
The Woodlands	LifeCell Corporation
Throughout Texas	Guardian NDT Services, Inc.
Throughout Texas	BIX Testing Laboratories
Throughout Texas	Western Atlas International, Inc.
Throughout Texas	Amarillo Road Company
Throughout Texas	The Western Company of North America
Throughout Texas	Pro Wireline Services, Inc.
Throughout Texas	Midland Inspection Incorporated
Throughout Texas	DJ Inspection Services, Inc.
Throughout Texas	Surbelt Laboratories, Inc.
Throughout Texas	Capitan Corporation
Throughout Texas	Sperry-Sun Drilling Services, Inc.
Throughout Texas	Tru-Tec, Inc.
Throughout Texas	Samount Corporation
Throughout Texas	Tubular Inspectors, Inc.
Throughout Texas	San Antonio Development Agency
Throughout Texas	Tenneco Gas
Tyler	Medical Center Hospital
Tyler	NuTech, Inc.

100356	Lufkin	17	07/27/89
100547	Odessa	27	07/19/89
100031	Orange	25	06/30/89
103501	Pasadena	5	07/27/89
102032	Plano	16	07/17/89
101300	Port Arthur	15	07/27/89
102406	Richmond	11	07/27/89
102487	San Angelo	20	07/27/89
104223	San Antonio	2	07/24/89
103833	San Antonio	5	07/24/89
100106	San Antonio	12	07/24/89
102266	San Antonio	22	07/27/89
100421	San Antonio	14	07/27/89
101922	San Antonio	22	07/27/89
103574	San Antonio	11	07/27/89
101279	San Antonio	46	07/27/89
104232	The Woodlands	1	07/27/89
104099	Corpus Christi	6	07/12/89
102143	Baytown	38	07/14/89
100446	Houston	94	07/13/89
102893	Amarillo	7	07/13/89
101323	Fort Worth	44	07/19/89
103708	Fearland	2	07/21/89
103724	Midland	16	07/20/89
102067	Houston	20	07/14/89
103926	El Paso	4	07/18/89
104211	Odessa	2	07/18/89
102603	Houston	28	07/18/89
103913	La Porte	22	07/20/89
103799	Roanoke	4	07/20/89
103083	Houston	10	07/14/89
104174	San Antonio	1	07/19/89
100180	Houston	18	07/18/89
100977	Tyler	46	07/27/89
104274	Tyler	2	07/27/89

RENEWALS OF EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Jourdanton	Tri-City Community Hospital	103510	Jourdanton	3	07/24/89
Lampasas	Rollins-Brook Hospital	103480	Lampasas	3	07/27/89
Throughout Texas	Amerasia Corporation	103567	Houston	7	07/17/89

TERMINATIONS OF LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Abilene	Abilene State School	102797	Abilene	4	07/17/89
Archer City	Archer County Hospital	103405	Archer City	6	07/24/89
Blum	Texas Linn Company	101615	Blum	8	07/18/89
Hebbronville	Caithness Mining Corporation	102922	Hebbronville	9	07/14/89
Throughout Texas	Southern Pacific Transportation Company	101448	Houston	10	07/14/89
Throughout Texas	Geoservices Incorporated	102803	Houston	6	07/14/89

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on August 2, 1989.

TRD-8907800

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: August 17, 1989

For further information, please call: (512) 835-7000.

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The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Dallas	Isolite Corporation, Inc.	104179	Dallas	0	08/03/89
Throughout Texas	Dresser Industries Inc.	104328	Dallas	0	08/02/89
Throughout Texas	Hidalgo Testing Service	104310	Mission	0	08/04/89

AMENDMENTS TO EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Arlington	Arlington Memorial Hospital	102217	Arlington	25	08/11/89
Arlington	Arlington Memorial Hospital	102217	Arlington	24	08/03/89
Azle	Harris Methodist Northwest	103230	Azle	5	08/03/89
Beaumont	Beaumont Medical Surgical Hospital	102102	Beaumont	27	07/27/89
Beaumont	Baptist Hospital of Southeast Texas	100358	Beaumont	56	08/07/89
Big Spring	Scenic Mountain Medical Center	100763	Big Spring	26	08/03/89
Dallas	Husam Hospital Medical City Dallas	101976	Dallas	58	08/10/89
Deer Park	Quantum Chemical Corporation	100204	Deer Park	21	07/20/89
Denton	Mimed Diagnostic Imaging	102129	Denton	41	08/03/89
Denton	Denton Regional Medical Center	102764	Denton	17	08/07/89
Eagle Pass	Maverick County Memorial Hospital	102555	Eagle Pass	18	08/07/89
El Paso	Valley Community Hospital	101947	El Paso	15	08/11/89
Fort Worth	Radiology Associates	103953	Fort Worth	5	07/27/89
Fort Worth	Texas Christian University	101096	Fort Worth	21	07/27/89
Fort Worth	Synacor International Corporation	102905	Fort Worth	26	08/07/89
Fort Worth	John Peter Smith Hospital	102208	Fort Worth	20	08/03/89
Fort Worth	Fort Worth Osteopathic Medical Center	100730	Fort Worth	31	08/11/89
Galveston	The University of Texas Medical Branch	101299	Galveston	29	07/31/89
Houston	Westbury Hospital	102471	Houston	9	07/27/89
Houston	HCA Medical Center Hospital	102073	Houston	20	07/27/89
Houston	Uncle Ben's, Inc.	104086	Houston	2	07/26/89
Houston	Allied Testing Laboratories	100880	Houston	31	08/07/89
Houston	Engineers and Fabricators Company	100981	Houston	38	08/07/89
Houston	Roche Professional Service Centers, Inc.	104024	Houston	2	08/07/89
Houston	Mallinckrodt, Inc.	103008	Houston	18	08/04/89

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Houston	TAPCO International, Inc.	102475	Houston	8	08/09/89
Houston	Baylor College of Medicine	100680	Houston	31	08/11/89
Houston	University of Texas M.D. Anderson Cancer Center	100466	Houston	43	08/11/89

Houston	Diagnostic Center Hospital	100131	Houston	31	08/09/89
Houston	Farley Hospital	101964	Houston	23	08/10/89
Irving	Synco International Corporation	102048	Irving	58	07/27/89
Irving	Damon Clinical Laboratories	102164	Dallas	9	08/10/89
Jasper	Jasper Memorial Hospital	103075	Jasper	22	08/10/89
LaPorte	E. I. duPont de Nemours & Company	100314	LaPorte	53	07/31/89
Longview	Texas Eastman Company	100301	Longview	59	07/31/89
Mansfield	Mansfield Community Hospital	103490	Mansfield	6	08/10/89
Mission	Mission Hospital	102802	Mission	15	08/10/89
Palestine	National Scientific Balloon Facility	102009	Palestine	15	08/11/89
Richardson	The University of Texas at Dallas	102114	Richardson	32	08/10/89
Richmond	Cooper Industries, Inc.	100312	Richmond	30	08/07/89
San Angelo	Angelo Clinic Association	104216	San Angelo	1	07/27/89
San Antonio	Baptist Hospital System	100455	San Antonio	43	08/14/89
San Antonio	Nix Medical Center	103531	San Antonio	5	08/14/89
Throughout Texas	GCT Inspection, Inc.	102378	South Houston	24	07/21/89
Throughout Texas	Via NDT Engineering and Testing	104322	Channelview	0	08/01/89
Throughout Texas	ICI Tracerco	103096	Pasadena	30	07/20/89
Throughout Texas	Southwestern Laboratories	101934	Dallas	24	07/26/89
Throughout Texas	Gulf and Western Oil Corporation	103972	San Antonio	3	07/26/89
Throughout Texas	K & N Perforators	102300	Victoria	20	07/31/89
Throughout Texas	Schlumberger Well Services	101833	Houston	71	07/26/89
Throughout Texas	ARCO Oil and Gas Company	100134	Plano	41	07/31/89
Throughout Texas	EFO Corporation	103921	Liberty	2	07/31/89
Throughout Texas	Synco International Corporation	102117	Austin	44	08/03/89
Throughout Texas	Roche Professional Service Centers, Inc.	103954	El Paso	10	08/07/89
Throughout Texas	NDE, Inc.	102353	Fort Worth	12	08/09/89
Throughout Texas	Radiographic Specialists, Inc.	102742	Houston	13	08/09/89
Throughout Texas	Tenneco Gas	101487	Houston	19	08/09/89
Throughout Texas	Goolsby Testing Laboratories, Inc.	103115	Humble	23	08/09/89
Tyler	Mother Frances Hospital	101670	Tyler	34	08/11/89
Waller	Progressive Metals, Inc.	102831	Waller	16	08/07/89
Wichita Falls	Midwestern State University	100526	Wichita Falls	15	08/11/89

RENEWALS OF EXISTING LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Dallas	Donald L. Levene, M.D., FAOC	L03817	Dallas	4	08/11/89
Fort Worth	X-Ray Equipment Company	L01485	Fort Worth	18	07/31/89
Levelland	Methodist Hospital Levelland	L02925	Levelland	9	07/27/89

TERMINATIONS OF LICENSES ISSUED:

<u>Location</u>	<u>Name</u>	<u>License#</u>	<u>City</u>	<u>Amend- ment #</u>	<u>Date of Action</u>
Breckenridge	Stephens Memorial Hospital	L03264	Breckenridge	4	08/10/89
Dalhart	Tom M. Hills, Ph.D.	L03648	Dalhart	2	07/31/89
Houston	International Clinical Laboratories, Inc.	L02096	Houston	6	08/11/89
Throughout Texas	Hamilton Drilling & Engineering Testing, Inc.	L03849	Austin	6	06/22/89

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on August 18, 1989.

TRD-8007501 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: August 18, 1989

For further information, please call: (512) 835-7000.

Radioactive Material License Amendment

Notice is hereby given by the Texas Department of Health that it has granted an amendment to the following radioactive material license.

Radioactive Material License Number L03966, issued to Medi-Physics, Incorporated for their facilities located in El Paso and Houston, (mailing address: Medi-Physics, Inc., a subsidiary of Hoffman-La Roche Inc., doing business as Roche Professional Service Centers, Inc., 140 East Ridgewood Avenue, P.O. Box 289, New Jersey 07653-0289).

The amendment to this license changes the name under which the licensee is doing business from MPI Professional Service Centers, Inc. to Roche Professional Service Centers, Inc.

The Division of Licensing, Registration and Standards has determined that the licensee is qualified by reason of training and experience to use the material in question for the purpose requested in accordance with these regulations in such a manner as to minimize danger to public health and safety, and property; the licensee's equipment, facilities, and procedures are adequate to minimize danger to public health and safety, and property; the issuance of the license amendment will not be inimical to the health and safety of the public; and the licensee satisfies any applicable requirements of the *Texas Regulations for Control of Radiation* (TRCR).

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Civil Statutes, Article 4590f, as amended, §11B(b), and as set out in TRCR 13.6. A person affected is defined as a person who is a resident of a county, or a county adjacent to a county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated. Should no request for a public hearing be timely filed, the amendment will remain in effect.

A copy of all material submitted is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Information relative to the amendment of this specific radioactive material license may be obtained by contacting David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756. For further information, please call (512) 835-7000.

Issued in Austin, Texas, on August 17, 1989.

TRD-8007504 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: August 18, 1989

For further information, please call: (512) 835-7000.

Revocation of Certificate of Registration

The Texas Department of Health, having duly file a complaint pursuant to *Texas Regulations for Control of Radiation* Part 13.8, has revoked the following certificate of registration. Colonnade Health Corporation, R14235, Northbrook, July 24, 1989.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m. to 5 p.m. (except holidays).

Issued in Austin, Texas on August 18, 1989.

TRD-8007592 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: August 18, 1989

For further information, please call: (512) 835-7000.

The Texas Department of Health, having duly filed a complaint pursuant to *Texas Regulations for Control of Radiation Part 13.8*, has revoked the following certificate of registration. Ed DeCoux, D.D.S., R12329, Bay City, July 21, 1989.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, 1212 East Anderson Lane, Austin, Monday-Friday, 8 a. m. to 5 p.m. (except holidays).

Issued in Austin, Texas on August 18, 1989.

TRD-8907593 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: August 18, 1989

For further information, please call: (512) 835-7000.

Request for Proposals

In the August 11, 1989, issue of the *Texas Register* (14 TexReg 4005) the department requested proposals to conduct HIV education/prevention projects. The deadline for proposals was Friday, September 15, 1989. The department now extends this deadline as follows: Grant applications must be received by 5 p.m. Friday, September 29, 1989, in order to be considered.

Issued in Austin, Texas, on August 21, 1989.

TRD-8907828 Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health.

Filed: August 21, 1989.

For further information, please call: (512) 458-7207

Request For Proposals

In the August 11, 1989, issue of the *Texas Register* (14 TexReg 4005) the department requested proposals to conduct human immunodeficiency virus HIV services program. The deadline for proposals was Friday, September 15, 1989. The department now extends this deadline as follows: Grant applications must be received by 5 p.m. Friday, September 29, 1989, in order to be considered.

Issued in Austin, Texas, on August 21, 1989.

TRD-8907827 Robert A. MacLean, M.D.
Deputy Commissioner for Professional
Services
Texas Department of Health

Filed: August 21, 1989.

For further information, please call: (512) 458-7207.

Texas Department of Human Services Notice of Public Hearing

The Department of Human Services (DHS) will conduct a public hearing to receive comments on the department's

proposed Home Energy Assistance Program state plan for fiscal year 1990. The hearing will be held on Thursday, September 14, 1989, at 9 a.m., at the department's public hearing room, first floor, east tower, 701 West 51st Street, Austin. Copies of the proposed plan will be available at the meeting. Advance copies may be obtained by calling Rodney Sprott at (512) 450-3454. Written comments may be submitted to Rodney Sprott, Program Specialist, Department of Human Services, P. O. Box 149030 (MC 518-W), Austin, Texas 78714-9030.

Issued in Austin, Texas, on August 18, 1989.

TRD-8907590 Ronald L. Lindsey
Commissioner
Texas Department of Human Services

Filed: August 18, 1989.

For further information, please call: (512) 450-3785

State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for name change of Ameriway Life Insurance Company, a domestic life insurance company. The home office is in Houston. The proposed new name is United HealthCare Insurance Company of Texas.
2. Application for incorporation in Texas of United HealthCare Insurance Company of Maryland, a domestic life insurance company. The home office is in Houston.
3. Application for incorporation in Texas of American Prepaid Dental Plan of Texas, Inc., a domestic health maintenance organization. The home office is in Dallas.

Issued in Austin, Texas on August 17, 1989.

TRD-8907545 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: August 17, 1989

For further information, please call: (512) 463-6327

Texas Department of Mental Health and Mental Retardation Notice of Public Hearing

Senate Bill 1426, §3, amends the Texas Department of Mental Health and Mental Retardation Act (Texas Civil Statutes, Article 5547-202) by adding §§2. 42-2.44, requiring that the department annually prepare a plan for the development of new beds in the ICF/MR Program and creating an Interagency Council on ICF/MR Facilities to approve the plan. After the council approves the plan, the department must adopt the plan by rule.

Consistent with this mandate, the Texas Department of Mental Health and Mental Retardation is sponsoring a public hearing in August. The purpose of this hearing is to solicit comments on the draft Annual Plan for New Bed Development in the Texas ICF/MR Program for fiscal year 1990.

The public hearing has been scheduled at the following location and time: August 29, 1989, at 9 a.m., in Room 1.110 of the Joe C. Thompson Conference Center, on the University of Texas campus, 2405 East Campus Drive, Austin.

Representatives from the Texas Department of Mental Health and Mental Retardation will be present to explain

the development of the plan and consult with and receive comments from interested citizens and affected groups. All written and oral comments will be considered in the preparation of the final plan.

Preliminary intended use reports for the plan of new bed development in the ICF/MR Program will be available at the public hearing and can be obtained from the Texas Department of Mental Health and Mental Retardation, ICF/MR Section, P. O. Box 12668, Austin, Texas 78711-2688, contact person: Carole Smith, (512) 465-4639. Comments will be accepted through August 28, 1989. If deaf interpreters are required, notify TDMHMR (512) 465-4639, Carole Smith, 72 hours prior to the meeting.

Issued in Austin, Texas on August 18, 1989.

TRD-8907805
Dennis R. Jones
Commissioner
Texas Department of Mental Health and
Mental Retardation

Filed: August 21, 1989

For further information, please call: (512) 465-4591

Summary of Public Comments on Intended Use of Federal Funds

The Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, as amended) requires annual public hearings on the intended use of federal funds allocated under the alcohol, drug abuse, and mental health services (ADM) block grant. Consistent with this mandate, the Texas Commission on Alcohol and Drug Abuse (TCADA), in conjunction with the Texas Department of Mental Health and Mental Retardation (TDMHMR), conducted public hearings at the following locations: July 10, 1989, Coastal Bend Council of Governments, 2910 Leopard Street, Corpus Christi; July 11, 1989, Houston-Galveston Area Council, 3555 Timmons, Houston; July 12, 1989, East Texas Council of Governments, 3800 Stone Road, Kilgore; and July 13, 1989, Permian Basin Regional Planning Commission, 2514 Pliska, Midland.

At these hearings, a preliminary summary of the intended use of ADM funds for federal fiscal year 1990 (beginning October 1, 1989) was provided. Public comments were solicited for use in preparation of the final plans. Written comments were accepted through July 17, 1989. All written and oral comments will be considered in the preparation of the final fiscal year 1990 intended use report. A brief summary of the public comments follows.

Ten individuals or entities submitted either oral or written comments regarding the mental health portion of the ADM block grant.

Much of the testimony concerning the mental health portion of the intended use report was general in nature; however, several specific needs and comments were heard including: need for residential treatment services to children and adolescents; need more equitable distribution of funds to CMHMRC's; need for accountability of funds to CMHMRC's; need for residential programs in the community; need to address dually diagnosed patients (MI-substance abuse) in intended use report; strong testimony to keep Vernon Center for Youth; need for an adequate number of case managers; need for funds to be allocated more equitably to regions, especially West Texas; and a request to strike the word "prevention" from the language outlining the goals of the department.

The summary of comments pertaining to the substance abuse portion of the ADM block grant for fiscal year 1990

is published in response to the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35, as amended.)

Issued in Austin, Texas, on August 19, 1989.

TRD-8907518
Dennis R. Jones
Commissioner
Texas Department of Mental Health and
Mental Retardation

Filed: August 17, 1989

For further information, please call: (512) 465-4591

Middle Rio Grande Development Council Request for Proposal

The Middle Rio Grande Development Council is requesting proposals for audit of all activities and programs of the council for a three-year period beginning October 1, 1989-September 30, 1990, and including the fiscal years ending September 30, 1991 and September 30, 1992. This request is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The audit must be conducted according to generally accepted auditing standards as included in *Statements on Auditing Standards*, for financial and compliance audits contained in the United States General Accounting Office's *Standards for Audit of Governmental Organizations, Program, Activities and Functions*, the Office of Management Budget's *Major Compliance Features of Programs Administered by State and Local Governments* (the approved compliance supplement), the Single Audit Act of 1984 (Public Law 98-502), and the Office of Management and Budget's Circular A-128. The contract will be awarded on the basis of the firm's experience, and the audit cost per year. Proposal request packages may be obtained by contacting: Ramon S. Johnston, Deputy Director, Middle Rio Grande Development Council, P.O. Box 1199, 403 East Nopal, Carrizo Springs, Texas 78834.

All proposals must be received no later than 5 p.m., September 29, 1989.

Issued in Austin, Texas, on August 16, 1989.

TRD-8907546
Michael Patterson
Executive Director
Middle Rio Grande Development Council

Filed: August 17, 1989

For further information, please call: (512) 878-3533

The University of Texas System Notice of Contract Award

The University of Texas Medical Branch at Galveston (UTMB) files this statement of award of contract for consulting services in accordance with provisions of Texas Civil Statutes, Article 6252-11c. On August 10, 1989, UTMB entered into a contract for consulting services in response to consultant proposal request published in the November 25, 1988, issue of the *Texas Register* (13 TexReg 5938).

Project Description. The contractor selected to provide the required advisory and project management services to UTMB shall assist in: development of an equitable compensation program which will emphasize internal equity; market competitiveness and career growth; communication of program to employee population in administrative/pro-

positional positions and UTMB management; collecting and analyzing position information and evaluating position relationships utilizing computer assisted techniques; gathering market data and developing salary structure; development of compensation policies for administration of program; and implementation of program including education of users.

Name and Address of Contractor. Coopers & Lybrand located at 1100 Louisiana, Suite 4100, Houston, Texas 77002, is the consultant who has contracted with UTMB for this project.

Value of Contract and Effective Dates. The maximum amount of this contract is \$53,946, plus additional reasonable and documented travel expenses in an amount not to exceed \$7,800. This project became effective August 10, 1989, and shall continue in effect until the activities described in the contract are completed and accepted by UTMB.

Issued in Austin, Texas on August 18, 1989.

TRD-8907550

Arthur H. Dilly
Certifying Official
The University of Texas System

Filed: August 18, 1989

For further information, please call: (512) 499-4402

