

Texas Register

28

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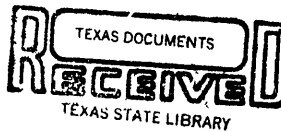
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Texas Register

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Information Available: The 10 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- In Addition—miscellaneous information required to be published by statute or provided as a public service

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes 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: 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: "12 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 TexReg 3."

How To Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule 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 rule is designated by a TAC number. For example, in the citation 1 TAC §27.15:

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

TAC stands for the *Texas Administrative Code*;

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



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1 TAC §113.6—1518

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4 TAC §§9.10, 9.12, 9.13—1538

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22 TAC §711.11—1596

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25 TAC §§401.681-401.692—1631, 1642

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28 TAC §51.7—1539

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31 TAC §§65.37, 65.61-65.64—1654

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The Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made March 29, 1988

To be a member of the **Advisory Council on Community Affairs**, for a term to expire January 31, 1989: Edward L. Garner, 1110 Dressen, Spearman, Texas 79081. Mr. Garner will be replacing Alderman Phyllis Kittinger of Sweeny whose term expired.

To be a member of the **Texas Funeral Services Commission**, for a term to expire January 31, 1993: Reverend C.L. Jackson, Pleasant Grove Baptist Church, 2801 Conti, Houston, Texas 77020. Reverend Jackson will be replacing Mrs. Margaret Ward of Houston whose term expired.

To be a member of the **District One Review Committee, Board of Medical Examiners**, for a term to expire January 15, 1994: Richard H. Eppright, M.D., 6560 Fannin, #1902, Houston, Texas 77030. Dr. Eppright will be replacing Dr. John W. Nichols of Galena Park whose term expired.

To be a member of the **District One Review Committee, Board of Medical Examiners**, for a term to expire January 15, 1992: Robert W. Feldtman, M.D., 909 Frostwood, Suite 230, Houston, Texas 77024. Dr. Feldtman will be replacing Dr. Thomas Paschal Clarke of Houston whose term expired.

To be a member of the **State Commission on Judicial Conduct**, for a term to expire November 19, 1993: Roderick Matthew Nugent, Jr., M.D., Suite 204, 1600 Coulter Road, Amarillo, Texas 79106. Dr. Nugent will be replacing Nathan I. Reiter, Jr., of Texarkana who resigned.

To be a member of the **Interstate Parole Compact Administrator**, for a term at the pleasure of the governor: Knox Fitzpatrick, 4800 Northway, #10A, Dallas, Texas 75206. Mr. Fitzpatrick will be replacing James Allen Arnold, Jr., of Austin who resigned.

To be a member of the **Texas Diabetes Council**, for a term to expire February 1, 1990: Judy Marie Hunt, 6832 Blackwood Drive, Dallas, Texas 75231. Mrs. Hunt is being reappointed.

To be a member of the **District One Review Committee, Board of Medical Examiners**, for a term to expire January 15, 1990: William H. Fleming, III, M.D., 1406 Sugar Creek Boulevard, Sugar Land, Texas 77478. Dr. Fleming will be replacing Dr. Arthur Jansa, Sr., of Houston whose term expired.

To be a member of the **Advisory Council on Community Affairs**, for a term to expire January 31, 1989: Arthur Lynn Hahn, P.O. Box 351, Fredericksburg, Texas 78624. Commissioner Hahn will be replacing Judge Sam D. Seale of Edna whose term expired.

To be a member of the **Texas State Board of Plumbing Examiners**, for a term to expire September 5, 1993: Gerald Leslie Harris, 403 Fox Briar Lane, Sugar Land, Texas 77478. Mr. Harris will be replacing Mr. Edward Tschoepe of San Antonio whose term expired.

Issued in Austin, Texas on March 30, 1988.

TRD-8803243

William P. Clements, Jr.
Governor of Texas



Name: Chris Lockhart
Grade: 10
School: A&M Consolidated High,
College Station

Attorney General

Description of Attorney General submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes, Article 4399, 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*.

Opinions

JM-873 (RQ-1243). Bob E. Bradley, Executive Director, Texas State Board of Public Accountancy, Austin, concerning the applicability of statutory fee increases to certified public accountants.

Summary of Opinion. Professional corporations and partnerships licensed pursuant to Texas Civil Statutes, Article 41a-1, §9(a)(2), are not required to pay the \$110 temporary fee increase imposed by the Act, §321. Initial licensees are required to pay the fee increase. The Texas State Board of Public Accountancy may reduce the license fee for qualified licensees over the age of 65. TRD-8803301

JM-874 (RQ-1340). Request from John F. Miller, Jr., Criminal District Attorney, Texarkana, concerning the qualifications of civil service commissioners (RQ-1340).

Summary of Opinion. Former Texas Civil Statutes, Article 1269m, §3(b), (now Local Government Code, §143.006), provides that an appointee to a Fire Fighters' and Police Officers' Civil Service Commission must have held public office within the preceding three years. That provision rendered ineligible both an individual who had recently served on a municipal housing authority; and an individual who had recently been elected to a local school board.

Acts of de facto officers are valid. An action in quo warranto is the exclusive remedy to challenge an officer's right to continue to hold office. TRD-8803302

Requests for Opinions

RQ-1381 Request from Jim D. Rudd, Chairman, Committee on Appropriations, Texas House of Representatives, Austin, concerning the adoption of a cafeteria plan for insurance coverage of state employees by the Employees Retirement System. TRD-8803310

RQ-1382 Request from Terry D. McEachem, Hale District Attorney, Hale County, Plainview, concerning the rescission by a commissioners court of salary increase for elected officials. TRD-8803309

RQ-1383 Request from Carl A. Parker, Chairman, Senate Education Committee, Texas State Senate, Austin, concerning whether Baylor University must comply with the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a. TRD-8803308

RQ-1384 Request from Honorable James F. Hury, Jr., Chairman, Joint Select Committee on the Judiciary, Austin, concerning the authority of the board of trustees of Galveston Wharves to commission a public security officer. TRD-8803307

RQ-11385 Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether the Harris County Bail Bond Board is authorized to regulate licensed attorneys who execute bail bonds for criminal defendants. TRD-8803306

RQ-11386 Request from Bob Bullock, Comptroller of Public Accounts, Austin, concerning the authority of the comptroller to enforce the criminal provisions of the Bingo Enabling Act. TRD-8803305

RQ-1387 Request from Randall L. Sherrod, Criminal District Attorney, Randall County, Canyon, concerning whether a justice of the peace must collect a \$75 fee at the time a defendant's fine is deferred under the Texas Code of Criminal Procedure, Article 45.54, and related questions. TRD-8803304

RQ-1388 Request from Tamara Armstrong, Assistant County Attorney, County Courthouse, Austin, concerning whether the names of all prisoners discharged from the Travis County sheriff's custody to the Texas Department of Corrections on specific dates are protected from required disclosure by the Texas Open Records Act, §3(a)(8), Texas Civil Statutes, Article 6252-17a. TRD-8803303



Emergency Rules

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 20 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 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter L. TDMHMR In-Home and Family Support Program

25 TAC §§401.681-401.692

The Texas Department of Mental Health and Mental Retardation adopts on an emergency basis new §§401.681-692, governing the TDMHMR In-Home and Family Support Program.

The new sections describe the administration of a program that provides financial support for services to persons with mental disabilities and their families. The emergency adoption is required to enable the provision of funding for necessary services to persons with mental disabilities and their families.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.681. Purpose. The purpose of this subchapter is to provide procedures to be followed in administering the In-Home and Family Support Program of the Texas Department of Mental Health and Mental Retardation (TDMHMR).

§401.682. Application. The provisions of this subchapter apply to all mental health and mental retardation authorities and other designated providers which receive state funding for the TDMHMR In-Home and Family Support Program.

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

Administering agency—The TDMHMR or a mental health or mental retardation authority which the department designates to administer the TDMHMR In-Home and Family Support Program.

CARE—The Client Assignment and Registration System database of TDMHMR.

Family—A group of two or more people that includes a person with a mental disability, who may or may not live with the family, and

that person's parent, guardian, spouse, or sibling.

Guardian—An individual who, under court order, is the guardian of the person of another or is a limited guardian under the Texas Probate Code, §130A-O.

Mental health authority—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally ill persons, as are required to be performed at the local level by state law and by the department.

Mental illness—Consistent with the Texas Mental Health Code, Texas Civil Statutes, Article 5547-4, an illness, disease, or condition which either:

(A) substantially impairs the person's thought, perception of reality, emotional process, or judgment; or

(B) grossly impairs behavior as manifested by recent disturbed behavior.

Mental retardation—Consistent with the Mentally Retarded Persons Act, Texas Civil Statutes, Article 5547-300, §3(5), significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

Mental retardation authority—The entity designated by the department to direct, operate, facilitate, or coordinate such services to mentally retarded persons as are required to be performed at the local level by state law and by the department.

Other support programs—All forms of local, state, or federal assistance; contract programs; or support provided by public or private funds for person with a mental disability or their families.

Parent—A natural, foster, surrogate, or adoptive parent.

Person with a mental disability—A person with mental illness, mental retardation, or a pervasive developmental disorder, or who is eligible for early childhood intervention services for children ages 0-3.

Pervasive developmental disorder—A pervasive developmental disorder beginning in childhood, including autism, that meets the criteria established in the most recent edition of the *Diagnostic and Statistical Manual III-R* (DSM III-R).

Support—A subsidy granted by TDMHMR to acquire support services to a person with a mental disability and/or that person's family.

TDMHMR In-Home and Family Support Program—The program developed in response to House Bill 1154 and Appropriations Rider 33 of the 70th Texas Legislature, the purpose of which is to foster independent choice by persons with a mental disability in the selection of services to be

provided; to assist such persons to be able to live independently in situations most like those experienced by persons without disabilities; to uphold the value of the family and the human dignity, pride, and independence of the individual; and to recognize the family as the primary mainstay for many persons with mental disabilities. The program enables flexibility in service delivery; innovation in service provision; minimization of barriers to service accessibility; placement of accountability for quality in the control of the person and/or family and the local provider; and non-duplication of services. The program does not serve persons with developmental disabilities who do not otherwise meet the definition of "person with a mental disability." Such persons may be eligible for services through the in-home and family support program of the Texas Department of Human Services (TDHS).

§401.684. Support Services. The TDMHMR In-Home and Family Support Program funds shall be used to provide the following types of present and future support for a family or a person with a mental disability who lives independently:

(1) medical, surgical, therapeutic, diagnostic, and other health services related to a person's mental disability, including medication;

(2) counseling or training programs that assist the family in providing proper care for a person with a mental disability or assist the person in an independent living situation, and that provide for their special needs;

(3) attendant care, home health aid services, homemaker services, and chore services that provide assistance with training, routine body functions, dressing, preparation and consumption of food, and ambulation;

(4) transportation for the person with a mental disability;

(5) transportation and room and board incurred by the family and the person during the person's evaluation for services;

(6) respite assistance for the family;

(7) original or unique services consistent with the intent of the enabling legislation and as negotiated between the family or person and the administering agency; and

(8) architectural modifications to the home and/or purchase or lease of special equipment or supplies that improve or facilitate the care, treatment, therapy, general living conditions, or access of the

person with a mental disability.
§401.685. *Eligibility Determination.*

(a) Criteria for eligibility. Upon receipt of a request for support, eligibility will be determined on the basis of the following four factors.

(1) **Diagnosis.** The family or a person with a mental disability is eligible for services if the person has been diagnosed to have mental illness, mental retardation, or a pervasive developmental disorder, or to require early childhood intervention services for children ages 0-3. (A comprehensive diagnosis and evaluation is not required for persons with mental retardation to be eligible for services.) The family or person may be eligible to receive support if the person is determined to be diagnostically eligible for services in three ways.

(A) A person meeting the criterion in paragraph (1) of this subsection who has previously received services from the Texas Department of Mental Health and Mental Retardation or a community mental health and mental retardation center is eligible for services. Additional evaluation or documentation of diagnosis is not required unless deemed necessary by intake staff.

(B) A person who submits a current diagnosis or assessment of private licensed or certified service providers that indicate that the person meets the criterion in paragraph (1) of this subsection is eligible for services. Additional evaluation or documentation may be required.

(C) A person who is determined to meet the criterion in paragraph (1) of this subsection by the professional staff of the administering agency is eligible for services. For persons otherwise meeting the residency, income, and need criteria described in paragraphs (2)-(4) of this subsection, emergency eligibility may be granted on a temporary basis for up to 90 days on a one-time basis. Documentation substantiating the diagnostic basis of eligibility is required within 90 days of emergency admission to services.

(2) **Residency.** A family is eligible to receive support if the family resides in Texas. A person with a mental disability is eligible to receive support if the person resides in Texas. Applicants must provide proof of residence.

(3) **Income.** Income eligibility will be determined by following the procedures described in §401.688 of this title, relating to Payment System.

(4) **Need.** The need for services shall be determined jointly by the applicant and staff of the administering agency.

(A) A person with a mental

disability or the family of a person being served in a 24-hour residential treatment program that is totally publicly funded (e.g., ICF/MR, PPP, TDMHMR, etc.) is not eligible to receive support through the TDMHMR In-Home and Family Support Program.

(B) TDMHMR In-Home and Family Support Program funds shall not be used to supplant services available through other local, state, or federal programs, but may be used to supplement services provided and may be granted to persons receiving benefits under any governmental entitlement programs.

(C) TDMHMR shall coordinate with TDHS to ensure that individuals receiving services through the TDHS in-home and family support program are excluded from eligibility from the TDMHMR In-Home and Family Support Program. TDMHMR may contract with TDHS to provide support services to mentally disabled clients of TDHS.

(D) Unless required by federal regulations, a local or state agency may not consider support received through the TDMHMR In-Home and Family Support Program in determining eligibility for another support program.

(b) Determination of services to be provided and appeal. For a family or a person with a mental disability who applies for services, the administering agency shall make the following determinations for each service requested.

(1) The administering agency shall determine if the applicant is eligible to receive the service from other support programs.

(2) If the administering agency determines that an applicant is eligible to receive the service from another support program and that the service is available, the administering agency may deny the request for the service. Denial of a request for a specific service does not constitute denial of a request for other services. In cases of emergency, support may be provided prior to the initiation of services in the other program.

(3) If the administering agency denies the request for the service, it shall provide to the applicant information for referral to the appropriate support program as well as information concerning the right to appeal the denial of services and to request a hearing (for which the department will provide a hearing officer) in accord with Chapter 403, Subchapter O of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases). Denial of a request for services due to lack of available funding shall not be considered

grounds for appeal.

(c) Eligibility for continuation of support. The continuation of support for a person with a mental disability or family through the TDMHMR In-Home and Family Support Program requires a reevaluation of eligibility prior to the beginning of each fiscal year and when qualifying factors change.

(d) Penalties. For purposes of applying for support through the TDMHMR In-Home and Family Support Program, a person commits a felony of the third degree who:

(1) makes or causes to be made a statement or representation that the person knows to be false; or

(2) solicits or accepts support for which the person knows he, or the person for whom the solicitation is made, is not eligible.

§401.686. *Documentation Requirements.*

(a) Each person with a mental disability or family shall have a written plan, which is part of the treatment plan when other nonresidential services are provided by the administering agency. The written plan shall include:

(1) the identification of the direct recipient of the service, i.e., the person with a mental disability and/or the family;

(2) the name of the agency staff member responsible for the development of the plan;

(3) a description of need(s) requiring funding;

(4) a description of services to be provided, including type and method of delivery;

(5) a statement of how funds will be used to meet identified need(s), related to the quantity, frequency, and duration of services to be provided and the rate, amount, and frequency of payment;

(6) a listing of specific qualification or requirements for service providers;

(7) a statement by the person with a mental disability or family and the staff of the administering agency that the individual selected to render designated services has been approved as a qualified service provider as agreed upon by the person or family and staff;

(8) a description of how the plan will be monitored, designating the staff person responsible, the frequency of review, and review criteria; and

(9) the signatures of the staff persons and the person with a mental disability and/or family members who developed the plan.

(b) For purposes of entry of data into the CARE system, a family receiving

support shall be principally identified by the name of the person with a mental disability on whose behalf support has been obtained. §401.687. *Program Standards and Quality Assurance.*

(a) Program standards. The administering agency shall incorporate reasonable standards for services provided through the TDMHMR In-Home and Family Support Program and shall document the specific standards and provider qualifications in the written plan. Specific standards referenced in the TDMHMR Community Standards may be used when appropriate and/or any other specification mutually agreed upon between the administering agency and the person with a mental disability and/or family.

(b) Quality assurance and other reviews. Quality assurance activities will be provided consistent with the administering agency's existing internal review mechanism for periodic program evaluation. Consistent with state and federal law, representatives from TDMHMR and other agencies may review the program periodically.

§401.688. *Payment System.*

(a) Support for services. The amount of support, not to exceed \$3600 in each fiscal year for each person with a mental disability or family, will be determined on an individual basis.

(1) Funds may be disbursed in a lump sum or on a periodic basis.

(2) With the agreement of the family or the person with a mental disability, as appropriate, payment may be made to the person with a mental disability, the family, or the vendor.

(3) The amount of support shall be reduced by the appropriate copayment, if any.

(4) Additional amounts may be granted on an individual basis by the commissioner or designee.

(b) Support for architectural modification and/or the purchase or lease of equipment or supplies. Additional support may be awarded as a one-time grant of not more than \$3600.

(1) Upon specific request and with the agreement of the administering agency, funds may be encumbered for this purpose as monies are available.

(2) All architectural modifications, equipment, and supplies purchased with these funds become the property of the person with a mental disability or family and shall not be inventoried by the administering agency or TDMHMR.

(3) Architectural modifications to leased or rented property shall be funded only upon the written approval of the owner

or property manager and become the property of the owner.

(c) Determination of amount of support and copayment. This determination shall be based on the income of the primary recipient of services as documented in the written plan, either the person with a mental disability or the family. If the primary recipient is a person with a mental disability who is under 18 years of age, the determination shall be based on the family's income.

(1) The administering agency shall base its determination of income on the adjusted gross income from the previous year's federal income tax return (Form 1040EZ, 1040A, or 1040) or other locally acceptable and documented indicator, excluding income from fixed assets such as real property or trusts.

(2) The administering agency shall determine the percentage of copayment required using a sliding scale with a base for full compensation that corresponds to Texas median income levels established by TDHS, without adjustment for present or future expenses, as follows:

| Family Size | Median Income |
|---------------------|---------------|
| 1 | \$16,738 |
| 2 | 21,889 |
| 3 | 27,039 |
| 4 | 32,189 |
| 5 | 37,339 |
| 6 | 42,489 |
| For each additional | |
| family member, add | \$ 1,960 |

(3) The amount of copayment shall be the appropriate percentage of the total cost of services requested.

(d) Accountability. The disbursement of support shall be in accordance with the laws of the state and shall include documentation that permits auditing by TDMHMR and the administering agency.

(e) Payment rates. Funding for services or architectural modifications and special equipment shall not exceed the prevailing rates for the area as determined by the administering agency.

(f) Automated disbursement. All administering agencies shall participate in the TDMHMR disbursement system when it becomes operational.

§401.689. Data Collection.

(a) Each administering agency shall maintain a log which shall be submitted to the appropriate deputy commissioner at the end of fiscal year 1988 and quarterly thereafter, to include the following:

(1) the number of persons with a mental disability and families who applied to the agency for support during the fiscal year;

(2) the number of persons with a mental disability and families who received support from the agency during the fiscal year;

(3) the type and extent of support services for which persons with a mental disability and families applied to the administering agency during the fiscal year and the type and extent of services provided;

(4) fiscal information to include income categories of persons receiving support and the range of copayments;

(5) any proposals for changes in the administration of the program; and

(6) the number of requests for services for persons who are developmentally disabled but do not have mental illness, mental retardation, a pervasive developmental disorder, or who are eligible for early childhood intervention.

(b) Each administering agency shall include a copy of its sliding scale with the log submitted to the deputy commissioner.

(c) Each administering agency shall participate in the evaluation of the program for a report to the 71st Legislature for the fiscal year ending August 31, 1988, or for any subsequent reports required.

§401.690. Protection of Client Rights. All departmental requirements relating to the protection of client rights and mechanisms for reporting and investigating complaints shall be observed in the TDMHMR In-Home and Family Support Program, including, but not limited to, notifying persons and their families of the existence of the public responsibility committee in accord with Chapter 403, Subchapter P of this title

(relating to Public Responsibility Committees), and informing persons and families of the name and phone number of the administering agency's client rights protection officer.

§401.691. Distribution. This subchapter shall be distributed to the medical director, deputy commissioners and assistant deputy commissioners, and directors of central office; superintendents and directors of all TDMHMR facilities; chairpersons, boards of trustees, and executive directors of all community mental health and mental retardation centers; and to any person requesting a copy of these rules.

§401.692. References. Reference is made in this subchapter to the following laws, rules, and standards:

(1) House Bill 1154, 70th Texas Legislature;

(2) Texas Mental Health Code, Civil Statutes, 1987, Article 5547-1 et seq.;

(3) Mentally Retarded Persons Act, Texas Civil Statutes, Article 5547-300 et seq.;

(4) Chapter 403, Subchapter O of this title (relating to Practice and Procedure with Respect to Administrative Hearings of the Department in Contested Cases);

(5) Chapter 403, Subchapter P of this title (relating to Public Responsibility Committees); and

(6) *TDMHMR Community Standards*, most recent edition.

Issued in Austin, Texas, on April 1, 1988.

TRD-8803371

Pattilou Dawkins
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: April 1, 1988

Expiration date: July 30, 1988

For further information, please call: (512) 465-4670.

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**Chapter 402. Client
Assignment and Continuity
of Services**

**Subchapter F. Continuity of
Services—Mental Retardation**

• 25 TAC §§402.201-402.203,
402.218, 402.222

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis new §§402.201-402.203, 402.218, and 402.222, concerning continuity of services—mental retardation. These and other sections of the new subchapter were proposed in the January 5, 1988, issue of *Texas Register* (13 TexReg 101) and will be adopted on a regular basis pending analysis of public comment.

The new sections reflect changes in the procedures of the department consistent with

board policy and the settlement of *Leisz v. Kavanagh*. The sections adopted on an emergency basis provide information and guidance for situations in which a client in a community-based placement wishes to return to the campus-based component. The emergency adoption is necessary to ensure that an effective mechanism is in place for the transfer of clients from community placements back to the state school campus under routine and emergency situations.

These new sections are adopted on an emergency basis under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§402.201. Purpose.

(a) The purpose of this subchapter is to establish criteria and procedures for:

(1) admission of a client to the campus-based component of a mental retardation (MR) facility;

(2) continuity of services activities related to MR facility campus-based components; and

(3) the review of appeals of placement recommendations for clients in community-based facilities.

(b) Interstate transfer of a client from an MR facility campus-based component in Texas to a residential facility in another state is governed by Chapter 403, Subchapter H of this title (relating to Interstate Transfer).

§402.202. Application.

(a) This subchapter applies to all MR campus-based components of the Texas Department of Mental Health and Mental Retardation (TDMHMR) as defined in this subchapter.

(b) This subchapter also applies to mental retardation authorities (MRAs) in the provision of continuity of services activities.

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

Absence—A period of time during which a client is physically away from a campus-based assignment and a return is expected. This term includes absence for community hospitalization, absence for home visit, absence—special therapeutic, absence for temporary transfer to another component, absence for trial placement, and absence for other.

Adaptive behavior—The effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group. A table of descriptions and illustrations of expected behavior has been developed by the American Association on Mental Deficiency (AAMD) to guide in determining adaptive behavior level. (See AAMD's Classification in Mental Retardation, 1983.)

Admission—Assignment of a client to MR campus-based component.

Assignment—The identification of the location at which a client is receiving services. Assignments track client movements throughout the TDMHMR service delivery system. Clients may have multiple assignments; however, a client may not have two concurrent residential assignments.

CARE—The TDMHMR client assignment and registration system.

Community-based facility—Any community-based facility, including facility community services, that provides supervision and habilitative services and includes residential services, in which the client is engaged in programs designed to improve the client's capabilities to optimally function or to maintain the client's present level of functioning (e.g., geriatric facilities).

Community MHMR center—An entity organized pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Articles 5547-203, as amended, which provides mental retardation services. The term does not include facility community services.

Community placement—The movement of a client from an MR campus-based component to a community-based facility. For the purposes of this subchapter, the term will be used for initial movement from the MR campus-based component to the community-based facility if the return of the client is not expected; and for the movement of the client from an MR campus-based component to a community-based facility, following the initial movement, when reassignment to the MRA is accomplished. If the client is absent from the MR campus-based component for a trial community placement and return is expected (e.g., from a weekend visit to a group home), the absence is considered an absence for trial placement.

Community support plan—A plan developed prior to an absence for trial placement/assignment to community-based services which lists the community support services which will be provided to the client in the community.

Community support services—A network of services to assist the client to remain in the community in lieu of or subsequent to placement in a facility.

Comprehensive diagnosis and evaluation (D & E)—A study including a sequence of observations and examinations of a person leading to conclusions and recommendations formulated jointly, with dissenting opinions, if any, by a diagnostic and evaluation team. The study shall include, but not be restricted to, a social and medical history; medical, neurological, audiological, visual, educational, and appropriate psychological and sociological examinations; and an examination of the person's adaptive behavior.

Continuity of services activities—The activities designed to ensure coordination of services to the client, particularly between components within the TDMHMR system, to include exchange of information pertinent to treatment/training, joint discharge planning, development of the community support plan, implementation of treatment recommendations and revisions, the obtaining of adequate resources to meet the client's needs, and other activities as outlined in the TDMHMR community standards.

Discharge—Discharge from an MR campus-based component when an MR client ends a campus-based assignment and chooses to

terminate association with TDMHMR; when an MR client is found to be ineligible for continued MR services; or upon the death of a client.

Developmental period—The period of a person's life which begins at conception and extends to the age 18 years.

Facility community services—Community-based program of a facility.

Guardian—The person who, under court order, is the guardian of the person of another or is a limited guardian under the Texas Probate Code, §130A-O.

Habilitation—The process by which an individual is assisted to acquire and maintain those life skills which enable the person to cope more effectively with the demands of self and the environment and to raise the level of physical, mental, and social efficiency, and which is not limited to programs of formal, structured education and training.

Interdisciplinary team—A group of persons functioning as a team to include: the client, client's family, and/or parent, as appropriate; persons who are professionally qualified, certified, or both, in various professions with special training and experience in the diagnosis, management, needs, and treatment of persons with mental retardation; persons who are directly involved in the delivery of mental retardation services to the client; representative(s) of the MRA; and at the request of the public responsibility committee (PRC), members of the MR residential facility's PRC.

Involuntary admission—The placement of a mentally retarded person pursuant to a court order in a TDMHMR MR campus-based component for services.

Legally adequate consent—Consent given by a person when each of the following conditions has been met.

(A) **Legal capacity.** The person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law (i.e., does not have a court-appointed guardian for this purpose).

(B) **Comprehension of information.** The person giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the client.

(C) **Voluntariness.** The consent has been given voluntarily and free from coercion and undue influence.

Local service area—A geographic area composed of one or more Texas counties delimiting the population which may receive services from an MRA.

Mental retardation—A condition characterized by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

Mental retardation authority (MRA)—A component of the TDMHMR service delivery system designated by the department to direct,

operate, facilitate, or coordinate MR services delivery for a local service area. Unless otherwise specified, MRA refers to the MRA serving the client's county of residence (see Exhibit A in §402.220 of this title (relating to Exhibits)).

Mental retardation (MR) campus-based component—A program composed of residential activities provided for clients on the grounds of a state school or state center providing long-term residential services.

Mental retardation services—Programs and assistance for persons with mental retardation which may include, but shall not be limited to, diagnosis and evaluation, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but shall not include those services or programs which have been explicitly delegated by law to other state agencies.

Reassignment—Reassignment from an MR campus-based component to an MRA when an MR client has demonstrated an ability to function in and benefit from placement in a community-based facility.

Resident of the state—

(A) A person who physically resides in Texas, who intends to remain in Texas indefinitely or who has no present intention to leave, and who is able to show that residence in any other state other than Texas has been abandoned;

(B) A person who has established residency in Texas, but is temporarily absent from the state;

(C) A minor whose parent or legal guardian is a resident of Texas;

(D) An adult whose legal guardian is a resident of Texas; or

(E) A military dependent who is a minor and whose parents' residence of record is Texas.

Register for MR campus-based component (RCBC)—A statewide listing of applicants who have been recommended by a certified D & E team or IDT for assignment to an MR campus-based component. The CARE system retains the date the client was initially placed on the register, the status (active or temporarily deferred), and the date the status was established or the last date the status changed.

Respite—The assignment to an MR campus-based facility of a client to provide special assistance or relief to the client or the client's family for a brief period of time.

Specifically designated staff person—A single staff person as defined in the TDMHMR community standards representing the receiving community-based service (a community center or facility community service) and who:

(A) participates with the facility in joint planning regarding community-based services and the development of the community support plan;

(B) informs the facility treatment coordinator of community resources and facili-

tates the coordination and development of community contacts and resources when necessary and practicable; and

(C) facilitates the delivery of services to the client as outlined in the TDMHMR community standards to include monitoring and coordination of the overall treatment plan and treatment recommendations.

Service district—County or counties for which an MR campus-based component has responsibility to serve individuals residing in that area.

TDMHMR service system—All campus-based facilities and community-based services operated or contracted by TDMHMR.

Transfer/reassignment—The movement of a client between MR campus-based components, or from an MR campus-based component to a community-based facility with the intent of permanent relocation and reassignment within the TDMHMR service delivery system.

§402.218. *Review Procedures Concerning Return to MR Campus-Based Component.*

(a) The department shall provide an administrative review procedure governing:

(1) appeal of the continuation of a community placement. Except when a factually and legally competent adult wishes to remain in a community-based facility, the client, parent, guardian, or other representative may request the client's return from a community-based facility to the MR campus-based component from which the client came; and

(2) appeal of the IDT recommendation for return to an MR campus-based component from a community placement. Except when a factually and legally competent adult wishes to return to the MR campus-based component, the client, parent, guardian, or other representative may request that the client remain in a community placement.

(b) The appeal should be sent to the head of the MRA, who will forward a copy to the head of the MR campus-based component.

(1) The appeal should be in writing and should contain:

(A) the names and addresses of the parents of the client;

(B) a short and plain statement of the action the requestor wants the facility to take;

(C) a short and plain statement of the factual reasons why the requested action should be taken by the facility;

(D) any statutes or rules with bearing on the request; and

(E) the name and address of

the person making the request and his or her relationship to the client.

(2) If the client, parent, guardian, or other representative needs assistance in putting the appeal in writing, the client, parent, guardian, or other representative may contact the Office of Client Services and Rights Protection, Central Office, and help will be provided to put the appeal in written form.

(3) Within 10 days of receipt of the appeal, a representative of the MRA will contact the requestor and attempt to resolve the situation. Pending resolution of the matter, no action will be taken regarding the client's assignment.

(c) If, after contact with the MRA, resolution cannot be attained, the client, parent, guardian, or other representative may request an administrative hearing by forwarding a copy of the appeal to the deputy commissioner for MR services, who shall take action to provide an administrative hearing in accord with §402.288 of this title (relating to Appointment of a Hearing Officer); §402.289 of this title (relating to Access to Records); §402.290 of this title (relating to Prehearing Conference); §402.291 of this title (relating to Standard and Burden of Proof); §402.292 of this title (relating to Notice of Filing; Service of Notices; Certificate of Service); §402.293 of this title (relating to Representation of Parties); §402.294 of this title (relating to Notice of Hearing); §402.295 of this title (relating to Setting a Time and Place for the Administrative Hearing); §402.296 of this title (relating to Rules of Evidence; Official Notice; Witnesses; Transcription); and §402.297 of this title (relating to Final Decisions).

(d) In cases in which the client, parent, guardian, or other representative believes that the continued placement of the client in the community-based facility presents an existing or eminent danger to the life, health, or safety of the client or others, or has resulted in the continued deterioration of the client's ability to function in the residential setting, an emergency return review procedure shall be used instead of the administrative review and hearing procedure.

(1) The client, parent, guardian, or other representative should notify the head of the MRA of the region in which the community-based facility is located, the head of the MR campus-based component, and the head of the community-based facility where the client is currently residing, if applicable.

(2) Notification should be by telephone immediately after the parent, guardian, or other representative determines that the emergency provision should be used.

(3) The head of the MRA shall investigate the situation and make a deci-

sion concerning return within 24 hours of receipt of notification by the client, parent, guardian, or other representative. If the decision is not to return the client on an emergency basis, administrative review may be initiated by the client, parent, guardian, or other representative in accord with the procedures described in subsections (b) and (c) of this section.

(4) The decision of the head of the MRA shall be reviewed by the deputy commissioner for mental retardation services or his designee within two days following the decision.

(e) All appeals concerning return to MR campus-based components, administrative hearings, requests for emergency return, final dispositions, and other pertinent information shall be documented.

§402.222. *Distribution.*

(a) This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation; the medical director, deputy and assistant deputy commissioners, and management and program staff of Central Office; superintendents and directors of all TDMHMR facilities; and members of board of trustees and executive directors of all community mental health and mental retardation centers.

(b) The superintendents and directors of TDMHMR facilities and the executive directors of community mental health and mental retardation centers shall be responsible for the dissemination of the information contained in this subchapter to all appropriate staff members.

Issued in Austin, Texas, on April 1, 1988.

TRD-8803373

Pattilou Dawkins
Chairman
Texas Department of
Mental Health and
Mental Retardation

Effective date: April 15, 1988

Expiration date: July 30, 1988

For further information, please call: (512) 465-4670.

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.293

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.293, concerning food, food products, meals, and food service. The emergency section which just expired on March 29, 1988, was substantially different from this emergency section. When the emergency section expired, the provisions of the former adopted

rule automatically became effective. However, to put businesses on notice that the comptroller is returning to the position of the last adopted section as well as incorporating the changes made to the Tax Code, Chapter 151, by the 70th Legislature, the comptroller feels an emergency rule would best clear up any possible doubt as to what rule is in effect as of today. The changes to the Tax Code affected vending machines and mobile vendors. The comptroller has also clarified his position on medicinal preparations and records required by persons operating dual businesses.

This amendment is adopted on an emergency basis 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 Service.

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

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

(4) Food—All edible [food] products intended for humans, which products are consumed for taste, aroma, or nutritional value [human consumption].

(5) Food products.

(A) Food products include items intended for human consumption. Examples include but are not limited to: [such as] cereal and cereal products, milk and milk products, including ice cream, oleomargarine, 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 [the above].

(B) Food products do not include:

(i) alcoholic beverages, [medicines, tonics, vitamins and medicinal preparations in any form;] carbonated and non-carbonated packaged soft drinks, [;] diluted juices, [when sold in liquid or frozen forms;] ice, [and] 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 has substantial nutritional value but the substance is marketed, labeled, and promoted to the public as being therapeutic; or

(ii) (No change.)

(6) Mobile vendor—A person who sells food [ready for immediate] consumption] from a motor vehicle, push cart, or any other form of vehicle.

(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, [vending machines for \$.17 or more,] 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)-(iv) (No change.)

(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% [three-fourths (75%)] of the retailer's gross sales on an outlet-by-outlet basis consist of sales of non-food 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)-(ii) (No change.)

(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) (No change.)

(8)-(9) (No change.)

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

(1) prepared, served, or sold ready for immediate consumption by any

retailer whether [or not] the food is sold to be eaten on premises or to go;

(2) sold through a vending machine; [by concession stands at ball parks, recreation halls, gymnasiums, and other like places of business, or served to a person seated in a stadium witnessing a sporting event;]

(3) prepared, sold, or served under the American plan. If the American plan is used by hotels, boarding houses, or other places of business, the charge for meals must be separated from the charges for room or lodging. If the charges for meals and lodging are not separately stated on the bill to the customer, hotel occupancy tax must be collected on the entire charge. If the lump-sum charge is not subject to hotel occupancy tax, sales tax must be collected on the portion of the charge attributable to the meals; [by caterers and wedding consultants. See subsection (f) of this section;]

(4) sold by universities, colleges, junior colleges, or other schools of higher learning; [ready for immediate consumption by a mobile vendor;]

(5) prepared, sold, or served by caterers and wedding consultants. See subsection (f) of this section; [under the American plan. If the American plan is used by hotels, boarding houses or other places of business, the charge for meals must be separated from the charges for room or lodging;]

(6) sold by a mobile vendor; [universities, colleges, junior colleges, or other schools of higher learning; or]

(7) sold by concession stands at ball parks, recreation halls, gymnasiums, and other like places of business, or served to a person seated in a stadium witnessing a sporting event; or [ready for immediate consumption through a vending machine for \$.17 or more.]

(8) purchased ready for immediate consumption by a common carrier for the purpose of serving passengers traveling en route aboard the carrier.

(c) Exempt sales.

(1) Food not ready for immediate consumption.

[(A) All items defined as a food or food product are exempt from tax so long as not sold ready for immediate consumption.

[(B) When a package contains both food products and taxable items the application of the tax depends upon the essential character of the complete package. If the taxable items are the primary component of the package and a single charge is made, the entire sales price of the package is taxable. If the taxable items are not the

primary component of the package the entire sale is exempt unless a separate charge is made for the taxable items, in which case the separate charge is subject to tax. In cases where no charge is made for the taxable items, these items are promotional items not purchased for resale by the person preparing the package. The person who provided the promotional items is liable for the tax based upon the cost of the item.]

(2) Food sales by schools, school associated groups, and state institutions [and carriers]. For the purposes of this paragraph, food includes soft drinks and candy but does not include alcoholic beverages. Tax is not due on the sale of food when:

(A)-(D) (No change.)

(E) served to students, residents, patients or inmates of hospitals, prisons, day-care centers, summer camps and other institutions licensed by the state for the care of human beings. However, meals served to visitors or employees of these establishments are taxable; or

[(F) purchased by common carriers to be served to passengers en route aboard the carriers. Any charge made by the carrier for serving these items (including alcoholic beverages) also is exempt from tax;

[(G) items purchased with food coupons under the food stamp program operated under 7 United States Code Chapter 51; or]

(F)(H) served to permanent residents of a retirement facility at the retirement facility. Meals served to visitors or employees of the facility are taxable.

(3) Items purchased with food coupons under the food stamp program operated under 7 United States Code Chapter 51.

(d) (No change.)

(e) Subsidies; employee meals; free meals.

(1) [Meals furnished by food service operators to employees are taxable to the employees only if the employees pay cash for the meals or if the employees choose to receive the meals in lieu of wages.] Meals furnished by food service operators to employees immediately prior, during or immediately after a shift, which are provided for the convenience of the food service operator [employer], are not taxable.

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

(f) responsibilities of persons who operate restaurants and like places or business caterers, and others selling food

ready for immediate consumption (food service operators).

(1) (No change.)

(2) A food service operator selling both food products and food ready for immediate consumption will be allowed to report tax on only food sold ready for immediate consumption if the records clearly identify, through methods such as sales invoices, or cash register coding, nontaxable and taxable food ales.

(3)[(2)] Operators of eating establishments, caterers, and other food service operators must pay the tax on the purchase of all equipment and replacement parts for equipment used to provide the food service. Examples of supply items and equipment taxable to the operator include, but are not limited to, tables, chairs, place mats, tablecloths, cloth napkins, silverware, dishes, cooking utensils, dispensers, garbage can liners, mop holders, lime squeezers, grill bricks, aprons, glass creamers, appliances, menus, and inserts.

(4)[(3)] Operators of eating establishments, caterers, and other food service operators may purchase on resale or exemption certificates those items which are furnished to their customers with the food or beverages. These items must be of a non-reusable nature or qualify for exemption as wrapping or packaging materials. Examples include non-reusable paper, wooden, plastic, and aluminum articles. Other items included are cake boxes, lunch boxes, cups (paper, plastic, or Styrofoam), paper and plastic containers, [menu tissues,] bottle wraps, butter chip trays, paper dishes, knives, forks, spoons, paper napkins, soda straws, toothpicks, French fry bags, stir sticks, ice cream sticks, souffle cups, hot dog trays, and other types of non-reusable trays.

(5)[(4)] Tax is due on any charge made for preparing and serving the meals and food. The sales price of meals and food includes any separately stated charge for the use by a customer of items such as tables, chairs, tableware, and tablecloths. The separately stated charge for the use of these items is not considered a rental of the items to a customer but an expense connected with the sale of the meals or food products.

(6)[(5)] Sales tax is due on the transfer to the customer of any taxable item, such as flowers, invitations, decorations, etc., which become the property of the customer.

(7)[(6)] For information on tips and gratuities see §3.337 of this title (relating to Gratuities).

(8)[(7)] For information on the responsibilities of persons who sell and serve mixed beverages see §3.289 of this title (relating to Alcoholic Beverages Exemptions).

(g) Food sales through vending machine [for \$.17 or more]. With the exceptions of soft drinks and candy, vending machine operators must [may] report sales tax on 50% of the total gross receipts from sales of all food [either the actual retail sales price of food sold ready for immediate consumption or they may report sales tax based upon their wholesale cost plus a 35% mark-up. Should the vending machine operator elect to report tax on wholesale plus a 35% mark-up. Should the vending machine operator elect to report tax on wholesale plus 35%,] No deduction will be allowed for spoilage, waste, or other loss of foods. Vending machine operators must [continue to report and] pay sales tax on the total gross receipts [actual sales price] from sales of soft drinks and candy. 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).

(h) Rounding off tax due. The practice of rounding off the amount of tax due on the sale of a taxable item is prohibited. Tax must be added to the sales price by using the formula [schedule] prescribe in the Tax Code.

(i) When a package contains both food products and taxable items the application of the tax depends upon the essential character of the complete package. If the taxable items are the primary component of the package and a single charge is made, the entire sales price of the package is taxable. If the taxable items are not the primary component of the package, the entire sale is exempt unless a separate charge is made for the taxable items, in which case the separate charge is subject to tax. In cases where no charge is made for the taxable items, these items are promotional items not purchased for resale by the person preparing the package. The person who provided the promotional items is liable for the tax based upon the cost of the item.

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TRD-8803312

Bob Bullock
Comptroller of Public
Accounts

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

Subchapter V. Bingo Regulation and Tax

• 34 TAC §3.548

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.548 concerning general restrictions on the conduct of bingo. The amendment amends

subsection (a) to allow a commercial lessor who has been a member of an organization for three years to assist in the conduct of bingo, amends subsection (d) to prohibit the advertising of prize amounts, deletes the present subsection (i) dealing with other games of chance, renumbers subsequent subsections, and adds a reference in the renumbered subsection (i) to §3.562 relating to unauthorized prizes.

The amendment is adopted on an emergency basis to avoid penalizing a commercial lessor who is a long-standing member of an organization and wishes to assist that organization on an unpaid basis to implement provisions of House Bill 1043, and to delete a provision which duplicates a provision in the Bingo Enabling Act.

This amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.548. *General Restrictions on the Conduct of Bingo.*

(a) Who may conduct bingo.

(1) (No change.)

(2) All callers, cashiers, ushers, bookkeepers, and accountants who assist in conducting, promoting, or administering bingo games must be members of the authorized organization or hired by and acting under the supervision of the authorized organization.

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

(C) A commercial lessor who has been an active bona fide member of the licensed organization for at least three years actively engaged in carrying out the purposes of the organization may assist that organization in the conduct of bingo at the lessor's premises but may not receive compensation for so assisting and may not act in the capacity of operator.

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

(d) Advertising. All advertisements for bingo games, whether in newspapers, fliers, pamphlets, brochures, or other circulars, billboards, signs, or recordings, must clearly identify the name of the licensed authorized organization [bingo operator], its bingo license number, and the days and times of the occasions it will operate. Only a licensed authorized organization may advertise or promote bingo. No licensed authorized organization may include in any advertisement or promotion in the amount of a prize or prizes offered at a bingo occasion. A reference to the prize limits allowed by the Bingo Enabling Act, so long as no specific amount is mentioned, is allowed.

(e)-(h) (No change.)

(i) Other games prohibited. No un-

lawful games of chance of any kind other than bingo, whether any separate or additional charge is required or not, may be conducted or allowed on the premises, as that term is defined in §3.544 of this title (relating to Definitions), during any occasion when bingo is played. A raffle or lottery is an example of an unlawful game of chance. A drawing where no payment of any kind is necessary to be eligible to win is not an unlawful game of chance. Bingo proceeds may not be used to purchase any prize given at a drawing.]

(l)(j) Gifts prohibited. No licensee or holder of a temporary authorization may offer, distribute, or give any service, thing of value, or opportunity to play bingo without charge, unless all players are offered or given the service, thing of value or opportunity to play without charge. Bingo proceeds may not be used to purchase any such service or thing of value. This subsection does not apply to additional prizes which are prohibited by §3.562 of this title (relating to Unauthorized Prizes).

(j)(k) Workers as players. No licensee or holder of a temporary authorization may permit any person who is conducting or assisting in the conduct of bingo to participate as a player when the person is conducting or assisting in the conduct of bingo.

(k)(l) No licensed organization may reserve, or allow to be reserved, any bingo card or cards for use by a particular individual.

Issued in Austin, Texas, on March 31, 1988.

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Comptroller of Public
Accounts

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



• 34 TAC §3.554

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §3.554, concerning instant bingo. The amendment changes paragraph (d)(3) to allow sales of instant bingo cards prior to a licensee's authorized playing times and to allow that redemption may be made during licensed times, during the time cards are being sold, or during a 30-minute intermission between occasions. The amendment changes when regular bingo is played); re-

peals the present paragraphs (d)(5) and (d)(9) restricting prize amounts and sales percentages for instant bingo, since the Bingo Enabling Act sets a separate prize limit for instant bingo effective September 1987; amends subparagraph (a) (2)(D) to eliminate the requirement that every instant bingo card be no less than 12 square inches in area when opened; amends paragraph (c)(4) to require use of pattern gluing on all instant bingo cards offered for sale by licensees on or after February 1, 1988; amends subsection (g) to simplify record keeping requirements; and renumbers other paragraphs as necessary. The amendment is intended to clearly inform manufacturers, distributors, licensees, and their employees and agents of the rules relating to the conduct of instant bingo as permitted under the Bingo Enabling Act, Texas Civil Statutes, Article 179d.

The amendment is adopted on an emergency basis and is intended to clarify certain requirements in connection with the conduct of instant bingo pursuant to §3.554, concerning instant bingo and the Bingo Enabling Act. The amendment implements the statement of legislative purposes expressed in the Bingo Enabling Act, §16(a) and §13(f), of requiring the Comptroller of Public Accounts to exercise strict control and close supervision over all games of bingo conducted in this state to the end that the games are fairly conducted, and of discouraging the commercialization of bingo and maximizing the availability of bingo proceeds for charitable purposes, respectively.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

§3.554. *Instant Bingo.*

(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) Instant bingo card—A device used to play a specific game of chance consisting of an individual card, the face of which is initially hidden from view to conceal numbers. Each individual card must:

(A) bear an impression of the comptroller's seal with the words "Comptroller's Office, State of Texas" engraved around the margin and a five-pointed star in the center;

(B) contain the letters B-I-N-G-O on its face in a conspicuous location in no less than 29 point type;

(C) be imprinted in no less than 12 point type with the words "Authorized by the Texas Bingo Regulation Division";

[(D) be no less than 12 square inches in area when opened;]

(D)(E) contain the series number assigned by the manufacturer;

(E)(F) contain the manufacturer's name or trademark;

(F)(G) disclose the amount and number of prize winners, the number of individual cards contained in a deal, and the cost per card; and

(G)(H) contain no other symbols, emblems, or characters.

(3) (No change.)

(b) Approval of cards.

(1) (No change.)

(2) Prototypes or examples of all cards must be presented to the Regulatory Taxes Section, Enforcement [Bingo Regulation] Division of the comptroller's office in Austin, for review. If granted, approval extends only to the specific card or series approved. If the card is modified in any way, except only in color and series number, it must be resubmitted to the Comptroller for approval.

(c) Manufacturing requirements.

(1) Manufacturers of instant bingo cards must manufacture, assemble, and package each deal in such a manner that none of the winning cards, nor the location or approximate location of any of the winning cards, can be determined in advance of opening by any means or device including any pattern in manufacture, printing, color variations, assembly, packaging markings, or by the use of a light. All winning and losing numbers conforming with designated numbers on the instant bingo card must be randomly selected. Each manufacturer must supply proof of random selection to the Regulatory Taxes Section, Enforcement [Bingo] Division by detailed description of the manufacturing process, and is subject to inspection by the comptroller or his designee.

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

(4) Each individual card must be constructed so that it is substantially impossible, in the opinion of the comptroller, to determine a concealed number or numbers until it has been opened by a player. Without limiting the requirements of the previous sentence of this paragraph, for all instant bingo cards offered for sale by a licensed organization on or after February 1, 1988, such cards shall be required to be constructed in such a manner so that card gluing occurs on all four edges of the card and between the individual broken tabs on the card.

(5) (No change.)

(d) Prizes, costs, sales, percentages.

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

(3) All sales of instant bingo cards must be performed under the same conditions and in the same manner as sales of regular and paper special bingo cards. Thus, a licensed organization may sell instant bingo cards on the premises specified in its license and where regular or paper special bingo cards are sold prior to its licensed times. They may be redeemed for cash or other cards only: [Instant bingo cards may be sold to the playing public only by a licensed organization, only during the times and in the immediate vicinity that regular bingo games are in progress, and only on the premises specified in its license.]

(A) during the times that bingo cards are being sold;

(B) during the organization's licensed times where regular or paper special bingo games are being conducted; or

(C) during a required 30-minute intermission between the bingo occasions of two organizations.

(4) (No change.)

(5) Prizes awarded on winning instant bingo cards must be taken into consideration in determining the maximum total of \$2,500 for any one occasion. Cards must be sold and prizes awarded on winning cards far enough in advance of the close of an occasion to enable an organization to adjust, if necessary, the prizes remaining for its regular and special bingo games.]

(5)(6) A licensed organization may not withdraw a series of cards from play until the series is completely sold out, all winning cards of \$5.00 or more have been cashed, or the bingo occasion ends.

(6)(7) A licensed organization may not commingle different deals of instant bingo cards.

(7)(8) Gross receipts from the sale of instant bingo cards must be included in the reported total gross receipts of the organization.

(9) The gross receipts on any one bingo occasion from the playing of instant bingo may not exceed 50% of a licensed organization's gross receipts for that occasion.]

(e)-(f) (No change.)

(g) Records.

(1) Any licensed organization selling instant bingo cards must maintain a purchase log showing [detailed records of]:

(A) the date[, quantity,] and

series number[, and card value] of purchased cards; and

(B) the name, address, and license number of the representative, distributor, or manufacturer from whom the cards were purchased.[:]

(C) the gross receipts from the sales of each series of cards;

(D) the amount of cash prizes paid out for each series; and

(E) the date each series was placed out for play and removed from play.]

(2) The sales of and prizes paid for instant bingo cards, including the series number, shall be shown on the daily cash report.

(3)(2) All records, reports, and receipts relating to an instant bingo series in play must be retained on the licensed premises for examination by the comptroller as long as the series is in play.

(3) Each instant bingo card series, together with all winning cards of \$5.00 or more in that series, must be retained by a licensed organization as part of its records.]

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

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TRD-8803324

Bob Bullock
Comptroller of Public
Accounts

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Expiration date: July 30, 1988

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

◆ ◆ ◆
• 34 TAC §3.555

The Comptroller of Public Accounts repeals on an emergency basis, §3.555, concerning certain charitable distributions. The section is being repealed in order that a substantially revised section may be adopted.

The section is repealed on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act. §3.555. *Certain Charitable Distributions.*

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TRD-8803321

Bob Bullock
Comptroller of Public
Accounts

Effective date: April 1, 1988

Expiration date: July 30, 1988

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

The Comptroller of Public Accounts adopts on an emergency basis a new §3.555, con-

cerning minimum charitable distribution. The new section combines §3.555 with §3.556, concerning minimum charitable distribution, provides for certain tax and expense credits toward the minimum charitable distribution in lieu of previous credits for rent and mortgage payments, places a limit on these credits, ends further distributions to dedicated funds, and provides for uses of existing dedicated funds. The existing §3.555 is also repealed, due to substantial changes.

The new section is adopted on an emergency basis so that it may take effect at the beginning of the next reporting quarter and so that the maximum distributions may be made for charitable purposes.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.
§3.555. Minimum Charitable Distribution.

(a) For the purposes of this section, the term "adjusted gross receipts" means gross receipts less the amount awarded as prizes.

(b) By the end of each quarter, each licensed authorized organization shall disburse for charitable purposes an amount not less than 35% of the organization's adjusted gross receipts from the last preceding quarter, less the credits allowed under subsection (c) of this section.

(c) The amount paid as bingo taxes for the last preceding quarter and an amount for basic fixed expenses equal to 2.75% of the gross receipts for the last preceding quarter shall be allowed as a credit towards the required 35% charitable distribution. However, the total of all credits, both for bingo gross receipts taxes and for expenses may not exceed \$11,000 per quarter.

(d) In reviewing a situation where a licensed authorized organization has failed to meet the requirements of this section for a particular quarter, the comptroller may consider whether, taking the amount required to be distributed during that quarter and the three preceding quarters and the charitable distributions and credits for each of these quarters under the rules in effect during each quarter, the organization has distributed a total amount sufficient to have met the 35% requirement for the quarter in question and the three preceding quarters combined.

(e) Contributions made on or after January 1, 1988, to dedicated building funds are not considered to be charitable distributions. However, amounts contributed to dedicated building funds prior to January 1, 1988, must, by January 1, 1989, be distributed to the organization's general fund building account or, if prior written approval is obtained from the comptroller, may be distributed for any allowable charitable purpose.

(f) Contributions made on or after April 1, 1988, to other dedicated funds are

not considered to be charitable distributions. However, amounts contributed to other dedicated funds prior to April 1, 1988, must by April 1, 1989, be distributed to the organization's general fund.

(g) This section is effective for reporting periods beginning on or after April 1, 1988.

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TRD-8803322 Bob Bullock
Comptroller of Public
Accounts

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Expiration date: July 30, 1988

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

◆ ◆ ◆
• 34 TAC §3.556

The Comptroller of Public Accounts repeals on an emergency basis §3.556, concerning minimum charitable distributions. The section is being repealed in order that it may be combined as part of a substantially revised §3.555.

The section is repealed on an emergency basis under Texas Civil Statutes, Article 179d, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.
§3.556. Minimum Charitable Distribution.

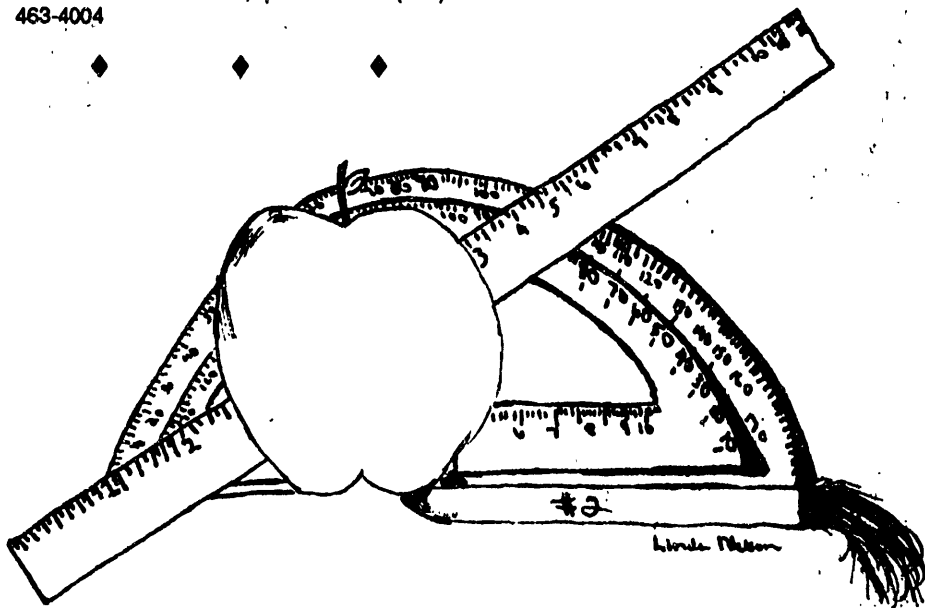
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Comptroller of Public
Accounts

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



Name: Linda Nelson
Grade: 12
School: A&M Consolidated High,
College Station

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 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter L. TDMHMR In-Home and Family Support Program

25 TAC §§401.681-401.692

(Editor's Note: The Texas Department of Mental Health and Mental Retardation proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)

The Texas Department of Mental Health and Mental Retardation proposes new §§401.681-401.692, governing the TDMHMR In-Home and Family Support Program. The new sections, which describe the administration of a program that provides financial support for services to persons with mental disabilities and their families. The new sections are proposed contemporaneously with their adoption on an emergency basis in this issue of the *Texas Register*. The new program is authorized to provide up to \$3600 annually for services, as well as a one-time grant of \$3600 for architectural modifications or equipment, to qualifying persons with mental health disabilities and mental retardation or their families. Funds totalling \$2,000,000 have been appropriated for the program, which will be evaluated in a report to the Texas Legislature at the end of the fiscal year.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that the cost to state and local government for administering the rules as proposed will be minimal. The cost to small businesses, including community mental health and mental retardation centers, cannot be determined at this time but is anticipated to be minimal.

Ms. Dillard has also determined that the public benefit anticipated as a result of enforcing the rules as proposed is the availability of funding for support services otherwise unaffordable for persons with mental disabilities and their families. 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 Linda Logan, Rules Coordinator, Texas

Department of Mental Health and Mental Retardation, P. O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing

- 31 TAC §§65.6, 65.7, 65.11, 65.14, 65.21, 65.23, 65.24, 65.31, 65.32, 65.33, 65.41, 65.42, 65.44-65.47, 65.71, 65.78

The Texas Parks and Wildlife Commission proposes amendments to §§65.6, 65.11, 65.14, 65.21, 65.23, 65.24, 65.31, 65.32, 65.33, 65.41, 65.42, 65.44-65.47, 65.71, and 65.78, and new §65.7, concerning the statewide hunting and fishing proclamation. The amendments as proposed are designed to prevent depletion or waste. The sections are in compliance with Texas Parks and Wildlife Code §61.051 and §61.053 and represent required findings of fact. These findings are based upon scientific studies and investigations which track trends in relative abundance of the different fish and wildlife species. These studies which support the proposed rules are incorporated by reference and are available for public inspection at Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4974 or 512-389-4974.

The proposed new and amended regulations that differ significantly from the existing game and fish regulations are summarized as follows.

The amendment to §65.6 concerns baitfish, cast net, day, dip net, fish, fish length, fly fishing, game animals, gear tag, gill net, grabble, hoop net, jug line, noodling pole, pole and line, purse seine, rough fish, sail line, seine, shad trawl, trammel net, trap, trawl, and umbrella net.

New section §65.7 provides rules that permit the legal importation of wildlife resources legally taken in another state or country.

The amendment to §65.11 concern posses-

sion of wildlife resources, permits deer carcasses without the head to be transported if a landowner's affidavit is attached, deletes cape requirement for antelope, and permits transportation of game to be in excess of bag limits.

The amendment to §65.14 changes counties where shotguns only are permitted during the spring gobbler season.

The amendment to §65.21 separates deer into antlerless white-tailed deer and antlerless mule deer.

The amendment to §65.23 changes deer permits to antlerless mule-deer and antlerless white-tailed deer permits and deletes the antlerless axis deer permit requirement in compliance with Legislative action.

The amendment to §65.24 adds counties where elk are considered wildlife resources in compliance with legislative action.

The amendment to §65.31 removes black bear as a wildlife resource in compliance with legislative action.

The amendment to §65.32 removes county listing where antelope may be taken.

The amendments to §65.33 expands either sex white-tailed deer seasons into more counties, where use of antlerless deer permits is not required; adds one week to the beginning of white-tailed deer season in most Texas counties; expands early antlerless only deer season into Walker County; adds one week to the end of white-tailed deer season in South Texas; expands late antlerless only deer season into all South Texas counties; closes four western Panhandle counties to the taking of white-tailed deer; increases the number of counties that are either sex bag limits during the archery only season; and increases length of mule deer season from nine to 16 days in length.

The amendment to §65.41 adds the words "possession limit" to clarify possession limit in §65.42.

The amendment to §65.42 adds possession to the title of the section.

The amendment to §65.44 increases Panhandle pheasant bag limit to three cocks and increases Coastal Prairie pheasant season to length of quail season and increases the bag limit to three cocks for coastal pheasants.

The amendment to §65.45 opens quail season Saturday nearest November 1 through last Sunday in February and standardizes quail bag limit at 15 quail per day and 45 in possession.

The amendment to §65.46 adjusts general turkey season to conform with white-tailed deer season for that county; changes bag

limit from two gobblers or bearded hens to two turkeys either sex in five central Texas counties; provides McLennan County with a fall gun and archery turkey season; closes spring turkey season in Anderson and Henderson Counties; and opens spring turkey season in portions of Angelina, Houston, and Trinity Counties.

The amendment to §65.47 lengthens the chachalaca season to be concurrent with quail season.

The amendment to §65.71 extends regulatory authority into federal waters for fish not under a federal fisheries management plan under the authority of Texas Parks and Wildlife Code, §47.019; establishes minimum length limit of 14 inches on all black bass and removes Panhandle exception (12 inches) to statewide minimum; establishes 18 inch minimum length on striped bass and its hybrids and establishes 15 fish possession limit statewide; establishes a 10 inch minimum length limit, 25 daily bag limit; and 50 possession limit on white bass; increases minimum length limit on channel and blue catfish from nine to 14 inches; increases minimum length limit on flathead catfish from nine to 24 inches; establishes a 14 inch minimum length for King mackerel; establishes a three fish daily bag and three fish possession limit on Spanish mackerel to conform with federal plan; establishes a one fish daily bag and possession limit and 48 inch minimum size limit for tarpon; increases minimum size limit on black bass from 16 inches to 18 inches on selected lakes (Fairfield, Pinkston, Mackenzie, Joe Poole); eliminates 14-18 and the 15-21 inch slot length limits on black bass and creates a new 14-21 inch slot length limit for lakes that currently have slot limits; eliminates harvest of black bass in Purtils Creek State Park Lake, Callilham State Park Lake and in all waters in the Lost Maples State Natural Area; prohibits the use of tagging devices to relocate fish; prohibits the retention of game fish caught by any device except pole and line, except that catfish may be taken with trotlines, juglines, and throwlines and with nets as specified in Cass, Morris and Bowie Counties, and except that red drum and spotted seatrout may be taken with sail lines; requires gear tags on freshwater trotlines be redated every 10 days instead of current 90 days; prohibits the use of trotlines in reservoirs less than 500 acres and in that portion of rivers or streams within the boundaries of State Parks or within city limits; and eliminates use of dip net to catch baitfish in fresh water. The amendment to §65.71 also reduces to five fish per day the bag limit on channel and blue catfish on lakes less than 500 acres and in that portion of rivers or streams within the boundaries of state parks or within city limits.

James E. Dickinson, director of finance, has determined that the first five-year period that new section and amendments will be in effect, there will not be fiscal implications for state or local governments or small businesses as a result of enforcing or administering the new section and amendments.

Mr. Dickinson also has determined that for each year of the first five years the new section and amendments are in effect the public benefit anticipated as a result of enforcing the new section and amendments will be to provide continuing hunting and fishing

opportunity based upon acknowledged wildlife resource management tenets. There will be no economic cost to individuals who are required to comply with the new section and amendments.

Comments on the proposal may be submitted to Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4974 or 1-800-792-1112, extension 4974.

The sections are proposed under Texas Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Texas Parks and Wildlife Commission with authority to establish wildlife resource regulations for this state.

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

[Bait fish (freshwater)—All rough fish, sunfish (bream), minnows, except as limited by statute.]

Cast net—A net which can be thrown or cast to drop over an area.

Day—As used in daily bag limit is that period of time that begins at midnight and ends at midnight.

Dip net—A mesh bag suspended from a frame attached to a handle.

Fish—

(A) Game fish—Blue catfish, blue marlin, broadbill swordfish, brown trout, channel catfish, cobia, crappie (black and white), flathead catfish, Guadalupe bass, king mackerel, largemouth bass, red drum, rainbow trout, sailfish, smallmouth bass, snook, Spanish mackerel, spotted bass, spotted seatrout, striped bass, tarpon, wahoo, walleye, white bass, white marlin, and hybrids or subspecies of the above.

(B) Non-game fish (rough fish and bait fish)—All species not listed as game fish, except endangered, threatened or potentially harmful fish which are defined and regulated under separate proclamations.

Fish length—The total length which is that straight line distance measured perpendicularly from the tip of the snout to the extreme tip of the tail (caudal fin) [in a flat or spread position] that is squeezed together or rotated to produce the maximum overall length while the fish is lying on its side with the jaw closed.

Fly fishing—The use of artificial wet or dry flies as a lure.

Game animals—Area [Include the following]:

(A) mule deer, white-tailed deer, pronghorn antelope, [wild deer, wild antelope, wild] desert bighorn sheep, [wild black bear, wild] gray or cat squirrels, [wild] fox squirrels or red squirrels, and collared peccary or javelina (Texas Parks and Wildlife Code, §63.001);

(B) (No change.)

(C) In Bexar County, nonindividually owned axis deer are wildlife resources as follows (Texas Parks and Wildlife Code, §115.011):

(i) A nonindividually owned axis deer in Bexar County is defined as an animal that has not been released for stocking purposes on property that is enclosed by a deer-proof fence.

(ii) An animal that has not been stocked on property where the landowner has a bill of sale or other legal document verifying a transaction has transpired whereby ownership of individually owned axis deer has been consummated.]

(C)(D) In Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell Counties wild elk are game animals (Texas Parks and Wildlife Code, §63.001).

Gear tag—A tag constructed of material as durable as the device to which it is attached. The gear tag must be legible and contain the name and address of the person using the device and the date the device was set out.

Gill net—A single wall of webbing held vertically in the water by a line with weights and a line with floats.

Grabble—To take or attempt to take fish with the hand.

Hoop net—A net distended by a series of hoops or frames, covered by non-metallic netting.

Jug line—A fishing line with five or less hooks [and] tied to a free-floating device.

Noodling pole—A length of pole constructed of wood, metal, fiberglass, or other material whether hollow or solid, with a hook attached and used to snag or foul hook fish.

Pole and line—A line with hook, attached to a pole. This gear includes rod and reel.

Purse seine (net)—A net with floatation on the corkline adequate to support the net in open water without touching bottom with a rope or wire cable strung through rings attached along the bottom edge to close the bottom of the net.

[Rough fish (freshwater)—Carp, suckers, buffalo, gar, shad, Rio Grande perch, drum or gaspergou, bowfin or grundle, pickerel, mullet, goldfish, blue tilapia, Tilapia mossambica, bullhead catfish, and grass carp.]

Sail line—A type of trotline [permitted only in saltwater] with one end of the main line fixed on the shore, the other end of the main line attached to a wind-powered floating device or sail [with no more than 30 hooks, with no hook placed more than 200 feet from the sail].

Seine—A section of non-metallic mesh webbing. The top edge buoyed upwards by a floatline and the bottom edge weighted.

[Shad trawl—A trawl having a mouth no larger than 36 inches in diameter and being no longer than six feet which may be equipped with a funnel or throat and which must be towed by boat or by hand.]

Trammel net—A net consisting of three walls of webbing [with a maximum mesh size of eight-inch square mesh for the two outer walls, and a minimum mesh size of three-inch square mesh for the center wall] suspended from a float line and attached to a single lead line.

Trap—A rigid device of various designs and dimensions used to entrap aquatic organisms.

Trawl—A bag-shaped net which is dragged along the bottom or through the water to catch fish or other aquatic organisms.

Umbrella net—A non-metallic mesh net that is suspended horizontally in the water by multiple lines attached to a rigid frame.
§65.7. Importation of a Wildlife Resource.

(a) For definition of wildlife resource, see §65.6 of this title (relating to Definitions).

(b) No person may import or possess a wildlife resource taken in another state or country without a verification document if the wildlife resource falls within one of these categories:

(1) the wildlife resource is required to be tagged in this state; or

(2) the number of wildlife resources possessed exceeds the possession limit established by this state; or

(3) the minimum and maximum size limits of the wildlife resource does not comply to those limits established by this state.

(c) A separate verification document must be completed for each species taken by the individual. The verification document must be legible and include the following information:

(1) out-of-state license number or license number from country where the wildlife resource was taken;

(2) number and the species name of wildlife resource possessed;

(3) location where wildlife resource was taken (nearest town, county, parish, name of area such as landowner name, public hunting area name);

(4) signature, printed name, address, and telephone number of person verifying where wildlife resource was taken; and

(5) tag, permit, or other document required by other state's or country's established regulations.

§65.11. Open Seasons: General Rules.

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

(e) It is unlawful to take, [or] attempt to take, or possess any of the wildlife resources except during the open season as provided [indicated] in these sections.

(f) (No change.)

(g) It is unlawful for a person who kills a deer, to fail to keep the head of the deer with the carcass or part of the car-

cass until it reaches the final destination. In lieu of the head, the person who killed the deer may obtain a receipt from a taxidermist for the head, or a statement from the landowner or the landowner's authorized agent containing the following information:

(1) name of person who killed the deer;

(2) date the deer was killed; and

(3) Whether the deer was antlered or antlerless. [including axis deer taken in Bexar County that are not individually owned, to possess the deer or any part of the deer without the accompanying head with antlers attached or the head of an antlerless deer, antlerless permit (except as provided by §65.23(h) and (i) of this title (relating to Antlerless Deer Permits)), or a receipt from a taxidermist for the head accompanying the deer or parts of the deer until the deer has been delivered to its final destination and is fully processed.]

(h)-(j) (No change.)

(k) The taking or shooting of turkey(s) from a roost is unlawful.

(l) It is unlawful for a person who kills an antelope to remove all evidence of sex, to possess an antelope or any part of an antelope without the unskinned head [and cape], the antelope permit, or a receipt from a taxidermist for the head accompanying the antelope or parts of the antelope until the antelope has been delivered to its final destination and is fully processed.

(m) A person may give, leave, receive, or possess any species of legally taken wildlife resource, or a part of the resource, that is required to have a tag or permit attached or is protected by a bag or possession limit, if the carcass or a part of a carcass is tagged with a hunter's document by the person who killed or caught the wildlife resource. The hunter's document shall accompany the carcass or a part of the carcass until reaching final destination and must contain the following information: [give a portion of an antelope carcass to someone if the person attaches to the portion of the antelope a legible document, bearing the hunter's name and address, date of kill, hunting license number, antelope permit number, name of ranch, and the county where the antelope was killed.]

(1) the name and address of the person who killed or caught the resource;

(2) the name of the person receiving the resource;

(3) description of the resource (number and type of species or parts);

(4) date resource was killed or caught; and

(5) location of where the re-

source was killed or caught (name of ranch, area, lake, bay or stream and county). The hunter's document is required in addition to any other tag or permit required by law.
§65.14. Firearms.

(a) It is lawful to shoot game animals and game birds with a rifle, shotgun, or other legal firearm, except it is unlawful to shoot:

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

(3) turkey gobblers during spring gobbler season in Angellna, Houston, [Anderson, Henderson,] Jasper, Newton, Polk, Trinity, and Tyler Counties with any firearm other than a shotgun.

(b)-(e) (No change.)
§65.21. Permits.

(a) No person may hunt antlerless mule deer, pronghorn antelope, elk, or antlerless white-tailed deer in areas where permits are prescribed unless he first procures a valid permit from the department.

(b) It is unlawful to use an antlerless mule deer, antelope, elk, or antlerless white-tailed deer permit on more than one antlerless mule-deer, antelope, elk, or antlerless white-tailed deer.

(c) No permit is required to hunt antlerless white-tailed deer on the Aransas National Wildlife Refuge in Aransas County, Laguna Atascosa National Wildlife Refuge in Cameron County, and Hagerman National Wildlife Refuge in Grayson County.

(d) No permit is valid unless it has been issued, used, and possessed strictly in accordance with this section; §65.22 of this title (relating to Antelope Permits); §65.23 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits); and §65.24 of this title (relating to Elk Permits).
§65.23. Antlerless Mule Deer and White-tailed Deer Permits.

(a) In all counties where antlerless mule deer or white-tailed deer are to be harvested, the department shall issue antlerless mule deer or white-tailed deer hunting permits, except where subsections (h) and (i) of this section apply, for designated tracts of land only to the landowners or their agents only after the owners or agents have applied in writing for the exact number of permits to be used on the designated tracts.

(b) It is unlawful to falsify ownership of land or amount of acreage owned or leased when applying for antlerless mule deer or white-tailed deer permits.

(c) It is unlawful for a landowner or agent to issue an antlerless mule deer or white-tailed deer hunting permit to a hunter to hunt on a tract of land other than the designated tract for which the permit was issued.

(d) (No change.)

(e) It is unlawful for a person to possess an antlerless mule deer or white-tailed deer, [including axis deer taken in Bexar County, that are not individually owned,] unless the person has been issued an antlerless mule deer or white-tailed deer hunting permit on which appear:

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

(f) It is unlawful for a hunter to use an antlerless mule deer or white-tailed deer hunting permit on a tract of land other than the designated tract for which the permit was issued.

(g) The permit shall be attached to each antlerless mule deer or white-tailed deer taken, and shall remain attached until the deer has been fully processed.

(h) No antlerless mule deer or white-tailed deer permit is required for a deer legally killed with longbow and arrow during the archery only open season (§65.33(2) and (4) of this title relating to Deer), when bag limits are designated as either sex.

(i) No antlerless mule deer or white-tailed deer permit is required for deer legally taken during white-tailed deer and mule deer general open seasons (§65.33(1) and (3) of this title relating to Deer), when regulations provide that antlerless mule deer or white-tailed deer may be taken without an antlerless deer permit.

§65.24. Elk Permits.

(a) The department shall designate the number of elk to be harvested from a tract of land in Brewster, Culberson, Dallam, Deaf Smith, El Paso, Hartley, Hudspeth, Jeff Davis, Moore, Oldham, Pecos, Potter, Presidio, Reeves, and Terrell Counties and shall issue a like number of permits to the owner or authorized agent of such tract.

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

§65.31. *Open Seasons and Bag Limits for Game Animals.* It is unlawful to hunt a game animal at any time other than during the open seasons provided in this section; §65.32 of this title (relating to Antelope: Open Seasons and Bag Limits); §65.33 of this title (relating to Deer); §65.34 of this title (relating to Javelina: Open Seasons and Bag Limits); §65.35 of this title (relating to Squirrel: Open Seasons, Bag, and Possession Limits); §65.36 of this title (relating to Desert Bighorn Sheep); §65.37 of this title (relating to Bear: Open Seasons and Bag Limits); §65.38 of this title (relating to Elk: Open Seasons and Bag Limits); §65.39 of this title (relating to Aoudad Sheep: Open Seasons and Bag Limits) or to take more than the daily bag limits, or to have in possession a game animal taken at any time other than during the open season.

§65.32. *Antelope: Open Seasons and Bag Limits.*

[(a)] In all counties [Andrews, Armstrong, Borden, Brewster, Carson,

Cochran, Coke, Cottle, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Donley, Ector, El Paso, Floyd, Gaines, Garza, Glasscock, Gray, Hansford, Hartley, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Kent, Lipscomb, Lubbock, Lynn, Martin, Midland, Mitchell, Moore, Motley, Ochilree, Oldham, Pecos, Potter, Presidio, Reagan, Reeves, Roberts, Scurry, Sherman, Sterling, Stonewall, Terrell, Terry, Tom Green, Winkler, and Yoakum Counties], there is an open season for antelope for nine consecutive days beginning the Saturday nearest October 1, and the bag limit is one antelope per season by permit only.

[(b)] There is no open season for antelope in any county other than those listed in subsection (a) of this section.]

§65.33. *Deer: White-tailed and Mule Deer.* No person may take more than the aggregate total of five deer per season; of which no more than two may be mule deer, only one of which may be a buck mule deer; no more than two white-tailed buck deer, or no more than four antlerless deer, both species combined.

(1) White-tailed deer: general open seasons, bag, and possession limits shall be as follows.

(A) In [Anderson,] Angelina (only on Angelina National Forest), Bell (east of IH 35), Bowie, [Cass, Cherokee,] Comal (east of IH 35), [Comanche,] Crane, Ector, [Freestone, Glasscock, Gonzales, Grimes, Guadalupe, Hardin, Harrison,] Hays (east of IH 35), Houston (only on Davy Crockett National Forest), Howard (north of IH 20), [Jackson,] Jasper (only on Angelina National Forest), [Karnes, Leon, Liberty, Limestone,] Loving, [Marion, Matagorda,] Midland, Mitchell (north of IH 20), Montgomery (only on Sam Houston National Forest), Nacogdoches (only on Angelina National Forest), Newton (only on Sabine National Forest), Nolan (north of IH 20), [Panola, Polk, Reagan, Robertson, Rusk,] Sabine (only on Sabine National Forest), San Augustine (only on Angelina and Sabine National Forests), San Jacinto (only on Sam Houston National Forest), Shelby (only on Sabine National Forest), Taylor (north of IH 20), Travis (east of IH 35), Trinity (only on Davy Crockett National Forest), [Tyler,] Upton, Walker (only on Sam Houston National Forest), Ward, [Wharton,] and Williamson (east of IH 35)[, and Wilson] Counties, there is an open season for white-tailed deer.

(i) Open season: First [Second] Saturday in November through the first Sunday in January.

(ii) (No change.)

(iii) Special exemption: In [Hardin, that portion of Harrison County south of Interstate Highway 20 and east of State Highway 43,] Jasper, Newton,

[Panola, Polk,] Sabine, and San Jacinto[, and Tyler] Counties only, hunting deer with dogs is permitted only during the period beginning on December 4 [10] through the first Sunday in January.

[(iv) Special season: In Angelina, Houston, Nacogdoches (south of State Highway 7), Polk, and Trinity Counties, there is a special early antlerless only season beginning October 24 through November 8, 1987. During the period when the archery only season and this special season are concurrent, no person may possess both firearms and archery equipment while hunting. The bag limit is four antlerless white-tailed deer only, only by antlerless deer permit. The bag limit is not in addition to the general or archery only season bag limits.]

(B) In Anderson, Angelina (except on Angelina National Forest), Aransas, [Atascosa,] Bandera, [Bee,] Bell (west of IH 35), Bexar, Blanco, Bosque, Brewster, [Brooks,] Brown, Burnet, Calhoun, [Cameron,] Cass, Cherokee, Coke, Coleman, Comal (west of IH 35), Comanche, Concho, Coryell, Crockett, Culberson, DeWitt, [Dimmit, Duval,] Edwards, [Frio,] Freestone, Gillespie, Glasscock, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Hardin, Harrison, Hays (west of IH 35), [Hidalgo,] Houston (except on Davy Crockett National Forest), Howard (south of IH 20), Irion, Jackson, Jasper (except on Angelina National Forest), Jeff Davis, [Jim Hogg, Jim Wells,] Karnes, Kendall, [Kenedy,] Kerr, Kimble, [Kinney, Kleberg,] Lampasas, Leon, Liberty, Limestone, [LaSalle, Live Oak,] Llano, McCulloch, [McMullen,] Marion, Mason, [Maverick,] Matagorda, [Medina,] Menard, Mills, Mitchell (south of IH 20), Montgomery (except on Sam Houston National Forest), Nacogdoches (except on Angelina National Forest), Newton (except on Sabine National Forest), Nolan (south of IH 20), [Nueces,] Panola, Pecos, Polk, Presidio, Reagan, Real, Reeves, Refugio, Robertson, Runnels, Rus., Sabine (except on Sabine National Forest), San Augustine (except on Angelina and Sabine National Forests), San Jacinto (except on Sam Houston National Forest), [San Patricio,] San Saba, Schleicher, [Starr,] Shelby (except on Angelina and Sabine National Forests), Sterling, Sutton, Taylor (south of IH 20), Terrell, Tom Green, Travis (west of IH 35), Trinity (except on Davy Crockett National Forest), Tyler, [Uvalde,] Val Verde, Victoria, Walker (except on Sam Houston National Forest), Wharton, [Webb, Willacy,] Williamson (west of IH 35), and Wilson [Zapata, and Zavala] Counties, there is an open season for white-tailed deer.

(i) Open season: First [Second] Saturday in November through the first Sunday in January.

(ii) (No change.)

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.21 of this title (relating to Permits) and §65.23 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(iv) Special exemption: In Hardin, that portion of Harrison County south of Interstate Highway 20 and east of State Highway 43, Jasper, Newton, Panola, Polk, Sabine, San Jacinto, and Tyler Counties only, hunting deer with dogs is permitted only during the period beginning on December 4 through the first Sunday in January.

(v) Special season: In Angelina, Houston, Nacogdoches (South of State Highway 7), Polk and Trinity, and Walker Counties, there is a special early antlerless only season October 22-November 4, 1988. During the period when the archery only season and this special season are concurrent, no person may possess both firearms and archery equipment while hunting. The bag limit is four antlerless white-tailed deer.

(C) In Atascosa, Bee, Brooks, Cameron, Dimmit, Duval, Frio, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Median, Nueces, San Patricio, Starr, Uvalde, Webb, Willacy, Zapata, and Zavala Counties, there is an open season for white-tailed deer.

(i) Open season: Second Saturday in November through the second Sunday in January.

(ii) Bag limit: Four white-tailed deer, no more than two bucks.

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.21 of this title (relating to Permits) and §65.23 of this title (relating to Antlerless Mule Deer and White-tailed Deer Permits).

(iv) Special (South Texas) late season: In the counties listed in §65.33(1)(C) there is a special late antlerless only white-tailed deer season.

(I) Open season: January 14-29, 1989.

(II) Bag limit: Four antlerless white-tailed deer only. Antlerless white-tailed deer may be taken without an antlerless deer permit in compliance with §65.33(1)(C)(iii). The bag limit is not in addition to the general or archery only season bag limits.

(C) No person may take or possess more than one white-tailed buck deer per season from counties, in the aggregate, listed within this subparagraph. In Archer, Armstrong, Austin, Bastrop, Baylor, Borden, [Brazoria, Brazos,] Briscoe, [Burlison,] Caldwell, [Callahan,] Camp, Carson, [Chambers,] Childress, Clay, Collingsworth, Colorado North of Colorado River, Cooke, Cottle, Crosby, Delta, Denton, Dickens, Donley, [Eastland,] Ellis, [Erath,] Falls, Fannin, Fayette, Fisher, Floyd, Foard, [Fort Bend,] Franklin, Garza, Gray, [Grayson (only on the Hagerman National Wildlife Refuge),] Gregg, Hall, Hardeman, [Harris, Hartley,] Haskell, Hemphill, Hill, [Hood,] Hopkins, Hutchinson, Jack, [Jefferson,] Johnson, Jones, Kent, King, Knox, Lamar, Lavaca (North of United States 90A and West of United States 77), Lee, Lipscomb, McLennan (North of Brazos River and East of IH 35), [Madison,] Milam, Montague, [Moore, Morris,] Motley, Navarro (West of IH 45), Ochilree, [Oldham, Orange, Palo Pinto], Parker, [Potter,] Rains, Randall, Red River, Roberts, Scurry, [Shackelford,] Smith, [Somervell, Stephens,] Stonewall, Swisher, Tarrant, [Throckmorton,] Titus, Upshur, Van Zandt, Waller, Washington, Wheeler, Wichita, Wilbarger, Wise, Wood, and Young Counties, there is an open season for white-tailed deer.

(i) Open season: First [Second] Saturday in November through the first Sunday in January.

(ii) (No change.)

(iii) Special exception: In Grayson County (only on the Hagerman National Wildlife Refuge), no antlerless deer permit is required to take antlerless deer in compliance with §65.21(c) of this title (relating to Permits).]

(iv) Special exemption: In Orange County only, hunting deer with dogs is permitted only during the period beginning December 10 through the first Sunday in January.]

(E) In Brazoria, Brazos, Burlison, Callahan, Chambers, Colorado (south of Colorado River), Eastland, Erath, Fort Bend, Grayson (only on Hagerman National Wildlife Refuge), Harris, Hood, Jefferson, Lavaca (south of U.S. 90A and East of U.S. 77), McLennan (south of Brazos River and west of IH 35), Madison, Morris, Navarro (east of IH 45), Orange, Palo Pinto, Shackelford, Somervell, Stephens, and Throckmorton Counties, there is an open season for white-tailed deer.

(i) Open Season: First Saturday in November through the first Sunday in January.

(ii) Bag limit: Four white-tailed deer, no more than one buck.

(iii) Antlerless white-tailed deer may be taken without an antlerless deer permit required by §65.21 of this title (relating to Permits) and §65.23 of this title (relating to Antlerless White-tailed Deer Permits).

(iv) Special exemption: In Orange County only, hunting deer with dogs is permitted only during the period beginning December 4 through the first Sunday in January.

(F)(D) In Henderson County, there is an open season for white-tailed deer.

(i) Open season: First [Second] Saturday in November through the first Sunday in January.

(ii) Bag limit: Four white-tailed deer, no more than two bucks, [antlerless by permit only].

(iii) (No change.)

(iv) Antlerless deer may be taken without an antlerless deer permit required by §65.21 of this title (relating to Permits) and §65.23 of this title (relating to Antlerless White-tailed Deer Permits).

(E) In Dimmit, Duval, Frio, LaSalle, McMullen, Maverick, Webb, Zapata, and Zavala Counties, there is an additional open season for white-tailed antlerless deer.]

(i) Open season: Second Saturday in January for 16 consecutive days.

(ii) Bag limit: Four antlerless white-tailed deer only, antlerless deer may be taken without an antlerless deer permit required by §65.21 of this title (relating to Permits) and §65.23 of this title (relating to Antlerless Deer Permits). The bag limit is not in addition to general or archery only seasons bag limits.]

(F) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Grayson (except Hagerman National Wildlife Refuge), Hale, Hansford, Hartley, Hockley, Hudspeth, Hunt, Kaufman, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Rockwall, Sherman, Terry, Winkler, and Yoakum Counties, there is no general open season for white-tailed deer.

(2) White-tailed deer: archery only open seasons, bag, and possession limits shall be as follows.

(A) In Anderson, Angelina, Aransas, Atascosa, Bandera, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brewster, Brooks, Brown, Burnet, Calhoun, Cameron,

Cass, Cherokee, Coke, Coleman, Comal, Comanche, Concho, Coryell, Crockett, Culberson, DeWitt, Dimmit, Duval, Edwards, Freestone, Frio, Gillespie, Glasscock, Goliad, Gonzales, Grimes, Guadalupe, Hamilton, Hardin, Harrison, Hays, Henderson, Hidalgo, Houston, Howard, Irion, Jackson, Jasper, Jeff Davis, Jim Hogg, Jim Wells, Kendall, Kenedy, Kerr, Kimble, Kinney, Kleberg, Lampasas, LaSalle, Leon, Liberty, Limestone, Live Oak, Llano, McCulloch, McMullen, Marion, Mason, Matagorda, Maverick, Medina, Menard, Mills, Mitchell, Montgomery, Nacogdoches, Newton, Nolan, Nueces, Panola, Pecos, Polk, Presidio, Reagan, Real, Reeves, Refugio, Robertson, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Schleicher, Shelby, Starr, Sterling, Sutton, Taylor, Terrell, Tom Green, Travis, Trinity, Tyler, Uvalde, Val Verde, Victoria, Walker, Webb, Wharton, Willacy, Williamson, Wilson, Zapata, and Zavala Counties, there is an open season during which white-tailed deer may be taken only with longbow and arrows.

(i)-(ii) (No change.)

(B) In Crane, Ector, Karnes, Loving, Midland, [Nueces,] Upton, and Ward Counties, there is an open season during which white-tailed buck deer may be taken only with longbow and arrows.

(i)-(ii) (No change.)

(C) No person may take or possess more than one white-tailed buck deer per season from counties, in the aggregate, listed within this subparagraph.

(i) In Austin, Brazoria, Brazos, Burleson, Callahan, Camp, Chambers, Colorado, Eastland, Erath, Falls, Fayette, Fisher, Fort Bend, Franklin, Gray, Grayson (only on the Hagerman National Wildlife Refuge), Gregg, Harris, Haskell, Hemphill, Hood, Hopkins, Hutchinson, Jack, Jefferson, Kent, Lamar, Lavaca, Lee, McLennan, Madison, Milam, Morris, Navarro, Orange, Palo Pinto, Parker, Red River, Roberts, Scurry, Shackelford, Smith, Somervell, Stephens, Throckmorton, Titus, Upshur, Van Zandt, Wheeler, Wise, [and] Wood, and Young Counties, there is an open season during which white-tailed deer may be taken only with longbow and arrows.

(I)-(II) (No change.)

(ii) In Archer, Armstrong, Bastrop, Baylor, Borden, Briscoe, Caldwell, Carson, Childress, Clay, Collingsworth, Cooke, Cottle Crosby, Delta, Denton, Dickens, Donley, Ellis, Fannin, Floyd, Foard, Garza, [Gray,] Grayson (except on Hagerman National Wildlife Refuge), Hall, Hardeman, [Hartley,] Hill, Hunt, [Hutchinson,] Johnson, Jones, Kaufman, King, Knox, [Lamar, Lee,] Lipscomb, Montague,

[Moore,] Motley, Ochiltree, [Oldham, Potter,] Rains, Randall, [Roberts,] Stonewall, Swisher, Tarrant, Waller, Washington, Wichita, and Wilbarger[, and Young] Counties, there is an open season during which white-tailed buck deer may be taken only with longbow and arrows.

(I)-(II) (No change.)

(D) In Andrews, Bailey, Castro, Cochran, Collin, Dallam, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, Hale, Hansford, Hartley, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Moore, Oldham, Parmer, Potter, Rockwall, Sherman, Terry, Winkler, and Yoakum Counties, there is no archery only open season for white-tailed deer.

(E) (No change.)

(3) Mule deer: general open season, bag, and possession limit shall be as follows.

(A) In Armstrong, Borden, Briscoe, Carson, Childress, Cottle, Crosby, Dallam, Deaf Smith, Dickens, Donley, Fisher, Floyd, Garza, Gray, Hall, Hartley, Hemphill, Hutchinson, Kent, King, Moore, Motley, Ochiltree, Oldham, Potter, Randall, Roberts, Scurry, Stonewall, and Swisher Counties, there is an open season for mule deer.

(i) Open season: Saturday before Thanksgiving for 16 [nine] consecutive days.

(ii) (No change.)

(B) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Hudspeth, Jeff Davis, Loving, Midland, Pecos, Presidio, Reagan, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler Counties, there is an open season for mule deer.

(i) Open season: Last Saturday in November for 16 [nine] consecutive days.

(ii) (No change.)

(C) (No change.)

(4) (No change.)

(5) **White-tailed Deer:** national wildlife refuges. Hunting season dates may further be restricted in compliance with regulations promulgated by the United States Fish and Wildlife Service and published in the Federal Register.

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

(C) On the Hagerman National Wildlife Refuge in Grayson County,

a metal box-car type seal issued by the Parks and Wildlife Department must be attached to the white-tailed deer carcass at the Hagerman National Wildlife Refuge's deer checking station.

§65.41. Game Birds: Open Seasons and Bag Limits. It is unlawful to hunt a game bird at any time other than during the open seasons provided in this section; **§65.42 of this title (relating to Prairie Chicken: Open Seasons; [and] Bag, and Possession Limits); §65.45 of this title (relating to Quail: Open Seasons, Bag, and Possession Limits); §65.46 of this title (relating to Turkey); and §65.47 of this title (relating to Chachalacas); and §65.48 of this title (relating to Migratory Game Birds), or to take more than the daily bag limits, or to have in possession a game bird taken at any time other than during the open seasons.**

§65.42. Prairie Chicken: Open Seasons, [and] Bag, and Possession Limits.

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

§65.44. Pheasant: Open Seasons, Bag, and Possession Limits.

(a) In Armstrong, Bailey, Briscoe, Carson, Castro, Childress, Collingsworth, Cottle, Crosby, Dallam, Deaf Smith, Donley, Floyd, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Hemphill, Hutchinson, Lamb, Lipscomb, Lubbock, Moore, Motley, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler Counties, there is an open season for pheasants.

(1) (No change.)

(2) Bag limit: Three [Two] cock pheasants per day.

(3) Possession limit: Six [Four] cock pheasants after the first day.

(4) (No change.)

(b) In Brazoria, Chambers, Fort Bend, Jefferson, Liberty, Matagorda, and Wharton Counties, there is an open season for pheasants.

(1) Open season: Saturday nearest November 1 through the last Sunday in February [Second Saturday in November for 30 consecutive days].

(2) Bag limit: Three [Two] cock pheasants per day.

(3) Possession limit: Six [Four] cock pheasants after the first day.

(4) (No change.)

(c) (No change.)

§65.45. Quail: Open Seasons, Bag, and Possession Limits.

(a) In all counties there is an open season for quail beginning the Saturday nearest November 1 [first Saturday in November] through the last Sunday in February.

(b) Bag limit: 15 quail per day [In all counties, the commission has deferred adopting quail daily bag and possession

limits until annual late summer production surveys are evaluated].

(c) Possession limit: 45 quail in possession [There is no open season on Mearns' quail, commonly called fool's quail].

(d) There is no open season on Mearns' quail, commonly called fool's quail.

§65.46. Turkey.

(a) (No change.)

(b) General open season, archery only season, and bag limit. In Aransas, Archer, [Atascosa,] Bandera, [Bee,] Bell, Bexar, Blanco, Bosque, [Brooks, Brown,] Burnet, Calhoun, Clay, Comal, Comanche, Coryell, [Dimmit, Duval, Eastland,] Erath, [Frio,] Gillespie, Goliad, Gonzales, Hamilton, Hays, Hood, Jack, [Jim Hogg, Jim Wells,] Karnes, Kendall, [Kenedy,] Kerr, [Kinney, Kleberg,] Lampasas, [LaSalle, Live Oak,] Llano, McLennan, McMullen, [Mason, Maverick, Medina, Mills,] Montague, [Nueces,] Palo Pinto, Parker, Real, Refugio, [San Patricio, San Saba,] Somervell, Stephens, Travis, [Uvalde, Webb,] Wichita, [Willacy,] Williamson, Wilson, and Young], and Zavala] Counties, there are open seasons for turkey.

(1) Open seasons.

(A) General open season: First [Second] Saturday in November through the first Sunday in January.

(B) (No change.)

(2) (No change.)

(c) General (South Texas) open season, archery only season, and bag limit. In Atascosa, Bee, Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney, Kleberg, LaSalle, Live Oak, McMullen, Maverick, Medina, Nueces, San Patricio, Uvalde, Webb, Willacy, and Zavala Counties, there are open seasons for Turkey.

(1) Open seasons.

(A) General open season: Second Saturday in November through the second Sunday in January.

(B) Archery only season: First Saturday in October for 30 consecutive days during which turkeys may be taken only with long bow and arrows.

(2) Bag limit: Two turkeys, gobblers or bearded hens.

(d)[(c)] Exceptions to general open season, archery only season, or bag limits.

(1) In Anderson, Andrews, Angelina, Austin, Bailey, Bastrop, Bowie, Brazoria, Brazos, Brewster, Burleson, Caldwell, Cameron, Camp, Cass, Castro,

Chambers, Cherokee, Cochran, Collin, Colorado, Cooke, Culberson, Dallam, Dallas, Deaf Smith, Delta, Denton, DeWitt, Ellis, El Paso, Falls, Fannin, Fayette, Fort Bend, Franklin, Freestone, Gaines, Galveston, Grayson, Gregg, Grimes, Guadalupe, Hale, Hansford, Hardin, Harris, Harrison, Henderson, Hidalgo, Hill, Hockley, Hopkins, Houston, Hudspeth, Hunt, Jackson, Jasper, Jeff Davis, Jefferson, Johnson, Kaufman, Lamar, Lamb, Lavaca, Lee, Leon, Liberty, Limestone, Loving, Lubbock, [McLennan,] Madison, Marion, Matagorda, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Orange, Panola, Parmer, Polk, Presidio, Rains, Red River, Reeves, Robertson, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Sherman, Smith, Starr, Tarrant, Terry, Titus, Trinity, Tyler, Upshur, Van Zandt, Victoria, Walker, Waller, Washington, Wharton, Winkler, Wise, Wood, Yoakum, and Zapata Counties, there is no general or archery only season on turkey.

(2) In Armstrong, Baylor, Borden, Briscoe, Brown, Callahan, Carson, Childress, Coke, Coleman, Collingworth, Concho, Cottle, Crane, Crockett, Crosby, Dawson, Dickens, Donley, Eastland, Ector, Edwards, Fisher, Floyd, Foard, Garza, Glasscock, Gray, Hall, Hardeman, Hartley, Haskell, Hemphill, Howard, Hutchinson, Irion, Jones, Kent, Kimble, King, Knox, Lipscomb, Lynn, McCulloch, Martin, Mason, Menard, Midland, Mills, Mitchell, Moore, Motley, Nolan, Ochiltree, Oldham, Pecos, Potter, Randall, Reagan, Roberts, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Tom Green, Upton, Val Verde, Ward, Wheeler, and Wilbarger Counties, there are open seasons for turkey.

(A) Open seasons:

(i) General open season: First [Second] Saturday in November through the first Sunday in January.

(ii) (No change.)

(B) (No change.)

(e)[(d)] Spring turkey gobbler season.

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

(4) In Angelina, Houston, and Trinity [Anderson and Henderson] Counties, there is a spring season on turkey gobblers.

(A) Spring season: Saturday nearest April 1 for 16 consecutive days only that area lying within boundaries beginning at the junction of State Highway 7 and FM Road 357 in Houston County, thence southeasterly on FM Road 357 to the junction of State Highway 94 in Trinity County, thence easterly on State

Highway 94 to the junction of FM Road 706 in Angelina County, thence northerly on FM Road 706 to the junction of State Highway 7, continuing westerly on State Highway 7 to the junction of FM Road 357 in Houston County [within the area beginning at the Trinity River bridge on State Highway 31 and extending eastward along State Highway 31 to the junction with State Highway 19 in Athens, thence southward along State Highway 19 to the junction with U.S. Highway 79 in Palestine, thence westward along U.S. Highway 79 to the Trinity River bridge, thence northward along the Trinity River to the bridge on State Highway 31].

(B) (No change.)

(5) (No change.)

§65.47. Chachalacas. In Cameron, Hidalgo, Starr, and Willacy Counties, there is an open season for chachalacas.

(1) Open season: Saturday nearest November 1 [First Saturday in December] through the last Sunday in February [January].

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

§65.71. [Saltwater] Fish.

(a) General rules.

(1) It is unlawful to take or attempt [The taking or attempting] to take; or possess [possession of saltwater] fish within a protected length limit [species (See §65.6 of this title relating to Definitions)] in greater numbers, by other means, or at any time[s] or place, other than as permitted under these rules [in this section is unlawful].

(2) It is unlawful for any person to possess a finfish of any species, except broadbill swordfish, shark or king mackerel taken from public water that has the head or tail removed until such person has reached his final destination. [There are no closed seasons for the taking of saltwater fish other than those prescribed in the Texas Parks and Wildlife Code or listed in this section.]

(3) Under these rules there are no public waters closed to the taking or retaining of fish except that at the Toledo Bend Reservoir Dam in Newton County, the area within 500 feet of the power plant water intake is closed to fishing from July 1 through September 30 of each year.

(4) These rules apply to fish caught in the Exclusive Economic Zone (EEZ) and landed in this state, under the authority of the Texas Parks and Wildlife Code §47.019 (Federal Law controls fish managed under a Federal Fishery Management Plan).

(b) Bag, possession, and [size (length)] limits.

(1) It is unlawful for any per-

son while fishing on public waters to have in his possession fish in excess of the daily bag limit or fish within a protected length limit as established for those waters. [There are no bag, possession, and size (length) limits on saltwater fish, except provided in the Texas Parks and Wildlife Code, §47.034, or authorized by the Texas Parks and Wildlife Commission under Chapter 61 and §66.2011(c).]

(2) The possession limit does not apply to fish stored at or in the possession of:

(A) a person who has an invoice or sales ticket showing the name and address of the seller, number of fish by species, date of the sale, and other information required on a sales ticket or an invoice;

(B) a cold storage plant if the fish or container holding the fish are tagged with the owner's name, address, numbers of fish by species, and the date placed in storage (Texas Parks and Wildlife Code 62.029); or

(C) fish stored at a person's permanent residence for personal consumption. [No person may possess fish taken from saltwater less than the minimum size or greater than the maximum size limits or more fish than the daily bag or possession limits listed in §65.62 of this title (relating to Freshwater Fish: Bag, Possession, and Size Limits) or in this paragraph as follows:

| <u>Species</u> | <u>Daily Bag</u> | <u>Possession</u> | <u>Maximum Length</u> | <u>Minimum Length</u> |
|------------------|------------------|-------------------|-----------------------|-----------------------|
| Cobia | No Limit | No Limit | No Limit | 37 inches |
| Red drum | 5 | 10 | 30 inches | 18 inches |
| Red snapper | No Limit | No Limit | No Limit | 13 inches |
| Spanish mackerel | No Limit | No Limit | No Limit | 14 inches |
| Spotted seatrout | 10 | 20 | No Limit | 14 inches |
| King mackerel | 2 | 2 | No Limit | No Limit |
| Striped bass | 5 | 10 | No Limit | 18 inches |
| Snook | 5 | 10 | 30 inches | 18 inches] |

(3) It is unlawful for the captain and/or crew of a vessel that is licensed or required to be licensed as a commercial fish boat to possess on board or land billfish, except swordfish. [The exceptions listed in this paragraph apply only to red snapper:

[(A) Five undersize snapper may be retained.

[(B) Persons on vessels legally operating trawls are excluded from the minimum size limits.]

(4) There are no bag, possession, or length limits on fish, except as provided in the Texas Parks and Wildlife Code, §47.034 and these rules.

(A) Statewide daily bag, possession, and length limits shall be as follows:

(A) Statewide daily bag, possession, and length limits

shall be as follows:

| <u>Species</u> | <u>Daily Bag</u> | <u>Possession</u> | <u>Minimum Length (Inches)</u> | <u>Maximum Length (Inches)</u> |
|--|------------------------------------|------------------------------------|--------------------------------|--------------------------------|
| <u>Bass: largemouth, smallmouth, spotted, and Guadalupe bass, their hybrids, and subspecies.</u> | <u>5</u> <u>(in aggregate)</u> | <u>10</u> <u>(in aggregate)</u> | <u>14</u> | <u>No Limit</u> |
| <u>Bass: striped, its hybrids, and subspecies.</u> | <u>5</u> <u>(in aggregate)</u> | <u>15</u> <u>(in aggregate)</u> | <u>18</u> | <u>No limit</u> |
| <u>Bass: white.</u> | <u>25</u> | <u>50</u> | <u>10</u> | <u>No limit</u> |
| <u>Catfish: channel and blue catfish, their hybrids, and subspecies.</u> | <u>25</u> <u>(in aggregate)</u> | <u>50</u> <u>(in aggregate)</u> | <u>14</u> | <u>No limit</u> |
| <u>Catfish: flathead.</u> | <u>5</u> | <u>10</u> | <u>24</u> | <u>No limit</u> |
| <u>Cobia.</u> | <u>No limit</u> | <u>No limit</u> | <u>37</u> | <u>No limit</u> |
| <u>Crappie: white and black crappie, their hybrids and subspecies.</u> | <u>25</u> <u>(in aggregate)</u> | <u>50</u> <u>(in aggregate)</u> | <u>No limit</u> | <u>No limit</u> |
| <u>Drum, red.</u> | <u>5</u> | <u>10</u> | <u>18</u> | <u>30</u> |
| <u>Mackerel, king.</u> | <u>2</u> | <u>2</u> | <u>14</u> | <u>No limit</u> |
| <u>Mackerel, Spanish.</u> | <u>3</u> | <u>3</u> | <u>14</u> | <u>No limit</u> |
| <u>Seatrout, spotted.</u> | <u>10</u> | <u>20</u> | <u>14</u> | <u>No limit</u> |
| <u>Snapper, red.</u> | <u>No limit</u> | <u>No limit</u> | <u>13</u> | <u>No limit</u> |
| <u>Snook.</u> | <u>5</u> | <u>10</u> | <u>18</u> | <u>30</u> |
| <u>Tarpon.</u> | <u>1</u> | <u>1</u> | <u>48</u> | <u>No limit</u> |
| <u>Species</u> | <u>Daily Bag</u> | <u>Possession</u> | <u>Minimum Length (Inches)</u> | <u>Maximum Length (Inches)</u> |
| <u>Trout: rainbow and brown trout.</u> | <u>5</u> <u>(in aggregate)</u> | <u>10</u> <u>(in aggregate)</u> | <u>No limit</u> | <u>No limit</u> |
| <u>Walleye.</u> | <u>5</u> | <u>10</u> | <u>16</u> | <u>No limit</u> |

(B) Exceptions to Statewide daily bag, possession, and length limits shall be as follows:

(i) For licensed chartered vessels the bag and possession limit is two king mackerel per person per trip for all persons on board, or three king mackerel per angler per trip exclusive of captain and crew, whichever is greater;

(ii) Five undersized (less than 13 inches) red snapper may be retained. A person fishing with a trawl for species other than red snapper is exempt from the minimum size limits for red snapper. For the purposes of this clause, a person fishing with a trawl is considered to be fishing for species other than red snapper when the total weight of red snapper does not exceed 5% of all other fish (including shrimp) aboard; and

(iii)

| Location (County) | Daily Bag | Minimum Length (Inches) | Special Regulation |
|--|-----------------------------|--|--|
| <u>Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.</u> | | | |
| <u>Lakes Toledo Bend (Newton, Sabine and Shelby) and Caddo (Marion and Harrison).</u> | <u>10</u> (in aggregate) | <u>12</u> | |
| <u>Lake Texoma (Cooke and Grayson).</u> | <u>10</u> (in aggregate) | <u>14</u> | |
| <u>Lakes Fairfield (Freestone), Pinkston (Shelby), Mackenzie (Briscoe and Swisher), Joe Poole (Dallas, Ellis, and Tarrant).</u> | <u>3</u> (in aggregate) | <u>18</u> | |
| <u>Lakes Braunig (Bexar).</u> | <u>2</u> (in aggregate) | <u>21</u> | |
| <u>Purtis Creek State Park Lake (Henderson), Calliham State Park Lake (Live Oak), and in all waters in the Lost Maples State Natural Area (Bandera).</u> | <u>0</u> (in aggregate) | <u>No Limit</u> | <u>Catch and release only.</u> |
| <u>Lakes Fayette County (Fayette), Houston County (Houston), Nacogdoches (Nacogdoches), Fork (Wood, Rains and Hopkins), Calaveras (Bexar), Monticello (Titus), and Gibbons Creek (Grimes).</u> | <u>3</u> (in aggregate) | <u>14-21</u> <u>Inch</u> <u>Slot</u> <u>Limit</u> | <u>It is unlawful to retain black bass between 14 and 21 inches in length. Black bass less than 14 inches or greater than 21 inches in length may be retained.</u> |

| Location (County) | Daily Bag | Minimum Length (Inches) | Special Regulation |
|---|-----------------------------|---------------------------|---|
| <u>Bass, striped, its hybrids, and subspecies.</u> | | | |
| <u>Lake Toledo Bend (Newton, Sabine and Shelby).</u> | <u>5</u> (in aggregate) | <u>No</u> <u>Limit</u> | <u>No more than 2</u> <u>over 30 inches</u> <u>in length may be</u> <u>retained each day</u> |
| <u>Lake Texoma (Cooke and Grayson).</u> | <u>15</u> (in aggregate) | <u>No</u> <u>Limit</u> | <u>No more than 5</u> <u>over 20 inches in</u> <u>length may be</u> <u>retained each day</u> |
| <u>Catfish: channel and blue catfish, their hybrids and subspecies.</u> | | | |
| <u>Lakes Wolf Creek, Upper and Lower Waterworks, and Blue (Anderson), in that portion of streams or rivers within the boundaries of a state park or within city limits, or in reservoirs 500 acres or less in size.</u> | <u>5</u> (in aggregate) | <u>14</u> | |
| <u>Lake Livingston (Polk, San Jacinto, Trinity, and Walker).</u> | <u>50</u> (in aggregate) | <u>14</u> | |
| <u>Crappie: black and white crappie, their hybrids and subspecies.</u> | | | |
| <u>Lakes Brandy Branch (Harrison), Braunig and Calaveras (Bexar), Fairfield (Freestone) and Jacksonville (Cherokee).</u> | <u>15</u> (in aggregate) | <u>10</u> | |

| Location (County) | Daily Bag | Minimum Length (Inches) | Special Regulation |
|--|-----------------------------|-------------------------|--------------------|
| <u>Lakes Choke Canyon (Live Oak and McMullen), Fork (Wood, Rains, and Hopkins), Palestine (Anderson, Cherokee, Henderson and Smith), Meredith (Hutchinson, Moore and Potter), Purdis Creek State Park Lake (Henderson), Whitney (Hill and Bosque), Joe Poole (Dallas, Ellis and Tarrant), Ray Roberts (Denton, Cooke and Grayson), Big Creek (Delta), and the Brazos River above Lake Whitney (Hill, Bosque, and Johnson).</u> | <u>25</u> (in aggregate) | <u>10</u> | |
| <u>Lakes Toledo Bend (Newton, Sabine and Shelby) and Caddo (Marion and Harrison).</u> | <u>50</u> | <u>No Limit</u> | |

Drum, red.

| | | | |
|--|----------|-----------|------------------------------|
| <u>Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Trading-house Creek (McClennan).</u> | <u>5</u> | <u>18</u> | <u>No maximum size limit</u> |
|--|----------|-----------|------------------------------|

[For licensed chartered vessels the bag and possession limit is two king mackerel per person per trip for all persons on board, or three king mackerel per angler per trip exclusive of captain and crew, whichever is greater. For definition of chartered vessel see §65.6 of this title (relating to Definitions).]

[For licensed chartered vessels the bag and possession limit is two king mackerel per person per trip for all persons on board, or three king mackerel per angler per trip exclusive of captain and crew, whichever is greater. For definition of chartered vessel see §65.6 of this title (relating to Definitions).]

[(5) It is unlawful for the captain and/or crew of a commercial fishing vessel to possess or land billfish, except swordfish.]

[(6) It is unlawful for any person while actually fishing on the public waters of this state to have in their immediate possession fish in excess of the daily bag limit or fish within a protected size limit as established for public waters by §65.71 of this title (relating to Saltwater Fish) and §65.62 of this title (relating to Freshwater Fish: Bag, Possession, and Size Limits).]

(c) Freshwater devices, means and methods.

(1) It is unlawful for any person to fish with more than 100 hooks on all devices combined.

(2) It is unlawful for any person to take, attempt to take, or possess fish caught by any device, means, or method other than as authorized in these rules.

(A) Pole and line (Includes rod and reel). Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County between the first concrete dam (weir) below the easternmost State Highway 306 bridge and the Little Ponderosa bridge, freshwater trout may not be retained when taken by any method except fly fishing. Artificial wet and dry flies may not have attached a hook with more than one barbed point. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(B) Trotline. Non-game fish, channel catfish, blue catfish, and flathead catfish may be taken by trotline. It is unlawful for any person to use a trotline:

(i) with a mainline length exceeding 600 feet.

(ii) with invalid gear tags. Gear tags must be attached within three feet of each end of the trotline and are valid only for 10 days after the date set out.

(iii) with the hook interval less than three horizontal feet.

(iv) with metallic stakes.

(v) with the main fishing

line and attached hooks and stagings above the water's surface.

(vi) with more than 50 hooks.

(vii) in Gibbons Creek Reservoir in Grimes County, Fayette power project cooling pond in Fayette County, Bryson Lake in Jack County, Cottonwood Lake in Wise County, Old Anson Lake in Jones County, Pinkston Reservoir in Shelby County, Upper Waterworks, Lower Waterworks, Blue Lake, and Wolf Creek Lakes in Anderson County, in that portion of streams or rivers within the boundaries of a state park or within city limits, or in reservoirs 500 acres or less.

(C) Jugline. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a jugline.

(D) Throwline. Non-game fish, channel catfish, blue catfish and flathead catfish may be taken with a throwline.

(E) Shad trawl. Non-game fish only may be taken with a shad trawl. It is unlawful for any person to use a shad trawl longer than six feet or with a mouth larger than 36 inches in diameter. A shad trawl may be equipped with a funnel or throat and must be towed by boat or by hand.

(F) Seine. Non-game fish only may be taken with a seine. It is unlawful for any person to use a seine:

(i) which exceeds 60 feet in length;

(ii) with mesh exceeding 1/2 inch square; or

(iii) which is not manually operated.

(G) Dip net. It is unlawful for any person to use a dip net except to aid in the landing of fish caught on other legal devices.

(H) Cast net. Non-game fish only may be taken with a cast net. It is unlawful for any person to use a cast net exceeding 14 feet in diameter.

(I) Minnow trap. Non-game fish only may be taken with a minnow trap. It is unlawful for any person to use a minnow trap exceeding 24 inches in length or with a throat larger than one by three inches.

(J) Glig. Non-game fish only may be taken with a glig.

(K) Umbrella net. Non-game fish only may be taken with an umbrella net. It is unlawful for any person to use an umbrella net with the area within the frame exceeding 16 square feet.

(L) Speargun and spear or long bow and arrow. Non-game fish only may be taken with a speargun and spear or long bow and arrow.

(M) Gaff. It is unlawful for any person to use a gaff except to aid in landing fish caught on other legal devices, means or methods. Fish landed with a gaff may not be below the minimum, above the maximum, or within a protected length limit.

(N) Gill nets, trammel nets, and hoop nets.

(i) It is unlawful for any person to use gill nets, trammel nets, or hoop nets in the freshwaters of this state except that:

(I) non-game fish, channel catfish and blue catfish may be taken in Bowie, Cass and Morris Counties (except in Ellison Creek Reservoir, Lake O' the Pines, and Dalingerfield State Park Lake);

(II) non-game fish only may be taken in the following rivers and streams, exclusive of tributaries:

(-a-) the Angelina River from U.S. Highway 84 in Rusk County to the Texas Eastern Transmission Company pipeline above Sam Rayburn Reservoir;

(-b-) the Attoyac River (Bayou) from U.S. Highway 84 in Rusk County to Cottonham Crossing above Sam Rayburn Reservoir;

(-c-) the Brazos River from State Highway 7 in Falls County to IH 10 in Austin County;

(-d-) the Navasota River from State Highway 7 in Robertson County to its confluence with the Brazos River;

(-e-) the Neches River from State Highway 294 in Cherokee County to U.S. Highway 69 in Jasper County and from F.M. Road 1013 in Jasper County to IH 10 in Jefferson County;

(-f-) the Sabine River from Lake Tawakoni Dam to U.S. Highway 80 in Van Zandt County and from State Highway 63 in Newton County to Sabine Lake;

(-g-) the San Antonio River and Coletto Creek (exclusive of Coletto Creek Reservoir) in Goliad and Victoria Counties;

(-h-) the San Bernard River between Austin and Colorado Counties;

(-i-) the Sulfur and North Sulfur Rivers in Delta and Hopkins Counties, excluding Cooper Reservoir; and

(-j-) Yegua Creek from Somerville Dam to its confluence with the Brazos River.

(III) Non-game fish only may be taken in all freshwaters of Chambers, Dimmit, Galveston, Gillespie, Liberty, and Zavala Counties and in all fresh waters of Jefferson and Orange Counties except those eastward of the State Highway 347 and southward of IH 10.

(ii) It is unlawful for any person:

(I) while using a gill net, trammel net or hoop net to have in his possession fish, other than those species permitted for that device;

(II) to use gill nets or trammel nets exceeding 1,800 feet in length, in any one operation;

(III) to use gill nets, trammel nets or hoop nets without valid gear tags attached within three feet of each end of the net.

(IV) to use gill nets or hoop nets with mesh less than three inches square; or

(V) to use trammel nets with mesh on any wall less than three inches square or greater than eight inches square.

(d)

[(c)] Saltwater devices, means, and methods.

(1) (No change.)

(2) Only the following means and methods may be used for taking fish except where noted in §65.81 of this title (relating to Special Coastal Laws):

(A) Devices.

(i) Pole and line (includes rod and reel), artificial and natural baits, trotline with the main fishing line and attached hooks and stagings under the water's surface, sail line, spear gun and spear, bow and arrow, perch trap, and gig. [It is

unlawful to use a spear gun and spear, bow and arrow, or gig to take red drum and spotted seatrout.] It is unlawful to take game fish [striped bass and snook] on any gear except pole and line or [and] rod and reel, except that red drum and spotted seatrout may be taken by sail line. Cast nets and 20-foot minnow seines may be used for taking bait. Dip nets and gaffs may be used only in aiding to land fish caught on other legal devices except that gaffs may not be used to land fish below the minimum or above the maximum size limits. Snagging or jerking fish (see §65.6 of this title relating to Definitions) is [specifically defined as an] illegal [method for taking salt-water fish, artificial lures not included].

(ii) Purse seine [nets] may be used only for taking menhaden from the waters of the Gulf of Mexico within the gulfward boundary lines of Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, and Willacy Counties from the coastline of the Gulf to the gulfward limit of the territorial seas from the third Monday in April through the Friday following the second Tuesday in October each year. The purse seine [net], not including the bag, shall not be less than three-fourths inch square mesh. Purse seine [No purse nets] may not be used in any bay, river, pass, or tributary thereto, nor within one mile of any jetty or pass, nor within one-half mile offshore in the Gulf of Mexico.

(iii)-(iv) (No change.)

(v) The use of airboats or jet driven devices to pursue and harass or harry are specifically prohibited as a means for the taking of red drum or spotted seatrout.]

(v)/(vi) Trammel nets, gill nets, and drag seines may be used in or on the coastal waters where presently legal, except between the hours of 1 p.m. on Friday through 1 p.m. on Sunday of each week.

(B) (No change.)

(C) Trotlines.

(i)-(ii) (No change.)

(iii) Trotline (except sail line) ends shall be marked with yellow [burlap or] flagging attached to stakes or with a yellow floating buoy not less than six [10] inches in height and six [above the water and 10] inches in width, or with a yellow plastic bottle of not less than one gallon size attached to end fixtures. All trotline floats must be yellow.

(iv)-(vii) No change.)

(viii) No person may use any bait other than natural bait on trotlines. Sail lines are excluded from the restrictions imposed by this clause.

(ix)/(viii) The minimum hook interval for trotlines (except sail lines) is three horizontal feet.

(x)/(ix) All trotlines, except sail lines, must be identified by gear tags. [a legible tag bearing the name and address of the fisherman and the date it was set out.]

(xi)/(x) All hooks used on trotlines shall be a [tuna] circle-type hook[s] with point[s] curved in [(such as the Mustad Part 39960ST or a comparable type hook)] and having a gap (distance from point to shank) of no less than one-half inch. Sail [Attended sail] lines are excluded from the restrictions imposed by this clause.

(xii)/(xi) Sail lines.

(I)-(IX) (No change.)

(D)-(G) (No change.)

[(H) Baits.

(i) It is unlawful to use any bait other than natural baits (see §65.6 of this title relating to definition of Natural Bait) on trotlines, except that artificial baits may be used on sail lines.

(ii) Other substances may be used as bait upon approval by the executive director.]

(H)(I) Perch traps.

(i)-(ii) (No change.)

(iii) Perch traps must be marked with a white floating visible buoy not less than six [10] inches in height and six [above the water and 10] inches in width, or with a white plastic bottle of not less than one gallon in size. The buoy must have a gear tag attached [shall be imprinted with the owner's name, address, license number, and the date it was set out].

(I)

[(J)] Snapper traps. The following regulations apply to traps fished exclusively in the Gulf of Mexico for red snapper:

(i)-(iv) (No change.)

(e) Prohibited acts in all public waters.

(1) In addition to any prohibition or provision of these rules it is unlawful for any person to take or attempt to take fish by:

(A) snagging or jerking;

(B) the use of a hand-operated device held under water, other

than a spear gun and spear;

(C) the use of yo-yos and other spring loaded reeling devices;

(D) grabbling;

(E) the use of a noodling pole;

(F) the use of explosives, poisons or other substances or things deleterious to fish as prohibited under the authority of the Texas Parks and Wildlife Code §66.003;

(G) the use of any device that uses or produces electricity or sound to stun or kill fish;

(H) the use of airboats or jet driven devices to pursue and harass or harry fish.

(2) It is unlawful for any person to release into the public waters of this state a fish with a device or substance implanted or attached that is designed, constructed or adapted to produce an audible, visual, or electronic signal used to monitor, track, follow, or in any manner aid in the location of the released fish. It is unlawful to have in possession while on or fishing in the public waters any device designed or adapted to receive a signal from a substance or device implanted or attached to a fish. §65.78. *Crabs.*

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

(d) Devices, Manners, and Methods.

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

(3) Crab Trap Identification.

(A) Each crab trap must be marked with an orange floating buoy not less than six [10] inches in height and six [above the water and 10] inches in width or with an orange plastic bottle of not less than one gallon size.

(B) Each crab trap buoy must have a gear tag attached [to it or be imprinted with the owner's name, address, license number (General Commercial Fisherman's or Saltwater Stamp), and date set out].

(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 March 31, 1988.

TRD-8803290

Boyd M. Johnson
Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 9, 1988

For further information, please call: (512) 389-4974

• 31 TAC §§65.37, 65.61-65.64

(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 Parks and Wildlife Department or in the Texas Register office, Room 503, Sam Houston Building, 201, East 14th Street, Austin.)

The Texas Parks and Wildlife Commission proposes the repeal of existing §§65.37 and 65.61-65.64, concerning the Statewide Hunting and Fishing Proclamation. The repeal is necessary to comply with legislative action and to combine both freshwater and saltwater sections of the proclamation into one section for clarity and conciseness.

James E. Dickinson, director of finance, 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. Dickinson 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 to provide optimum hunting and fishing opportunity based upon acknowledged wildlife resource management tenets. 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 Phil Evans, Regulatory Coordinator, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4979, or 1-800-792-1112, Ext. 4974.

The repeal is proposed under Texas Parks and Wildlife Code Chapter 61, uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Texas Parks and Wildlife Commission with authority to establish wildlife resource regulations for this state. §65.37. *Bear: Open Seasons and Bag Limits.*

§65.61. *Freshwater Fish: General.*

§65.62. *Freshwater Fish: Bag, Possession, and Size Limits.*

§65.63. *Freshwater Fish: Means and Methods.*

§65.64. *Other Freshwater Aquatic Animal Life.*

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 March 31, 1988.

TRD-8803291

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 9, 1988

For further information, please call: (512) 389-4974

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Part IX. Texas Board of Irrigators

Chapter 423. Registration of Irrigators and Installers

• 31 TAC §§423.10, 423.13, 423.22

The Texas Board of Irrigators proposes amendments to §§423.10, 423.13, and 423.22, concerning application processing, determination of application for registration under reciprocity, and hearing on a rejected application. The Board of Irrigators proposes these amendments to comply with House Bill 5, §3, 70th Legislature, 1987. The minimum time for processing applications in the 12 months prior to this proposal was four working days. The maximum time for processing applications in the 12 months prior to this proposal was 14 working days. The median time for processing applications in the 12 months prior to this proposal is seven working days.

Joyce Watson, executive secretary, has determined that for the first five-year period the proposed sections will be 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.

Ms. Watson also 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 clarity and therefore public understanding. 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 Larry G. Persky, Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087. Comments will be accepted 30 days after publication of these amendments in the *Texas Register*.

The amendments are proposed under the Licensed Irrigators Act, Texas Civil Statutes, Article 8751, §7, which provides the board with the authority to adopt, prescribe, promulgate, and enforce all rules reasonably necessary to effectuate the provisions of the Act. §423.10. *Application Processing.*

(a) Applications for registration shall be submitted to the board in a complete form and accompanied by the required application or examination fee, as applicable.

(b) Applications for registration by examination may be made at any time but must be accompanied by the examination fee and received by the executive secretary at least 45 [30] days prior to the applicant's examination date. Applicants shall be responsible for fulfilling application requirements by the deadline. If the application is complete, the executive secretary shall notify the applicant, so stating, within 10 working days after receipt of the applica-

tion.

(c) The board shall verify and evaluate each submitted application, and if the board or the executive secretary should require additional relevant information, the applicant shall submit such information within the time and in the form requested. The applicant shall be given written notice of any deficiency within 10 working days of receipt of the application.

(d) (No change.)

§423.13. *Determination of Application for Registration under Reciprocity.* The board's approval of an application for registration under, reciprocity shall be given by letter, within 30 days after receipt of said application, which assigns the applicant a registration number. A certificate of registration and identification card shall be issued upon the applicant's compliance with §425.41 of this title (relating to Seal Required) and §425.44 of this title (relating to Seal and Rubber Stamp Facsimile Design) as applicable.

§423.22. *Hearing on Rejection Application.*

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

(c) The board shall hold its hearing on the reasons for rejection within 60 days after it receives the written request for the hearing.

(d) (No change.)

(e) The board shall inform the applicant of its final decision on his application by certified mail. If the final decision is to uphold its rejection of the application, the board shall state in its final decision the reasons and relevant facts for rejection. The final decision or order must be rendered within 60 days after the date the hearing is finally closed.

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 March 31, 1988.

TRD-8803314

Joyce Watson
Executive Secretary
Texas Board of Irrigators

Earliest possible date of adoption: May 9, 1988

For further information, please call: (512) 463-8069

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

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

• 34 TAC §3.293

(Editor's Note: The Comptroller of Public Ac-

counts proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes an amendment to §3.293, concerning food, food products, meals, and food service. The amendments to this section are the result of changes made to the Tax Code by the 70th Legislature, 1987. The amendments address sold by mobile vendors, licensed carriers, and food sold through vending machines. The comptroller's position on medicinal preparations is addressed as well as the records required for persons operating a dual business.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no significant revenue impact on state or local government or small businesses as a result of enforcing or administering the section. Rules adopted under the Tax Code, Title 2, do 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 Mona Ezell Shoemate, Tax Policy 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.

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 March 31, 1988.

TRD-8803313

Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption: May 9, 1988

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 47. Primary Home Care

General Provisions and Services

The Texas Department of Human Services

(TDHS) proposes the repeal of §§47.901-47.906, 47.1906, 47.2901-47.2905, 47.2907-47.2912, 47.3901-47.3905, 47.3907, and 47.4901; amendments to §47.3906 and §47.5901; and new §§47. 1901-47.1904, 47.2901-47.2914, 47.3901-47.3905, 47.3907, 47.4901, 47.4903, 47. 4904, and 47.6902 in its primary home care chapter.

The purpose of the repeals, amendments, and new sections is to clarify provider requirements and service delivery expectations. The new sections incorporate policy clarifications and requirements that currently are in the contract agreement. The new sections also allow conditional prior approval to be given when noncritical omissions or errors are made on the nursing assessment and physician's order; prohibit the provider agency from knowingly sending attendants who have symptoms of communicable disease to a client's home; and set the conditions under which the primary home care provider agency may assign its contract to another legal entity. The following provider agency requirements are added: the provider agency supervisor must meet with the attendant in the client's home during the supervisory visit at least every 120 days must use the primary home care attendant orientation/RN supervisory visit form to document all supervisory visits; and the provider agency must date stamp all written complaints received, maintain accessible and available records of the complaints and their resolutions, and investigate and respond in writing to all written complaints received from department staff within 14 days of receipt. The provider agency must also ensure that a client is not without services for more than 14 consecutive days once services are initiated, except in certain circumstances or when written authorization is obtained from the department caseworker. The department is simultaneously proposing changes in its community care for aged and disabled chapter to clarify requirements for client eligibility. Upon adoption of the repeals, amendments, and new sections, the department will release a revised primary home care provider manual reflecting changes in both rule chapters.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections and repeals will be 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 and repeals.

Mr. Packard also has determined that for each year of the first five years the sections and repeals are in effect the public benefit anticipated as a result of enforcing the sections and repeals will be that provider agencies will have a clearer understanding of requirements for participating in the Primary Home Care Program. There is no anticipated economic cost to individuals who are required to comply with the proposed sections and repeals.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-240, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas, within 30 days of publication in the *Texas Register*.

• 40 TAC §§47.901-47.906

The repeals 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.

§47.901. *Attendant.*

§47.902. *Residence.*

§47.903. *Services.*

§47.904. *Appeals.*

§47.905. *Monitoring Medicaid Eligibility.*

§47.906. *Substitute Attendants.*

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 April 4, 1988.

TRD-8803382 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

General Provisions and Services.

• 40 TAC §§47.1901-47.1904

The new sections 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.

§47.1901. *Definitions.* The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

Abuse—Willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm, pain, or mental anguish; or willful deprivation by a caretaker or oneself of goods or services that are necessary to avoid physical harm, mental anguish, or mental illness.

Assignee—A legal entity that assumes the responsibilities and duties of a current primary home care contract through a legal assignment of contract from another legal entity.

Assignor—A legal entity that assigns its primary home care contract to another legal entity through an assignment of contract.

Attendant—A provider agency employee who provides the authorized tasks to the client.

Client—A person who is determined by the department to be eligible for primary home care services.

Days—All references to number of days are based on calendar days unless the text clearly states otherwise.

Department—The Texas Department of Human Services.

Exploitation—The illegal or improper act or process of a caretaker or others using an adult's resources for monetary or personal benefit, profit, or gain.

Medicaid eligible—An individual who is eligible for Medicaid as an SSI or AFDC client,

or who is eligible for medical assistance only while living in the community.

Neglect—Failure to provide for oneself the goods or services that are necessary to avoid physical harm, mental anguish, or mental illness; or the failure of a caretaker to provide these goods or services.

Physician's order—An order for primary home care services that is signed and dated by a physician or doctor of osteopathy (DO) who is licensed to practice medicine and who does not have a prohibitive ownership or significant financial or contractual relationship (42 Code of Federal Regulations 405.1633(d)) with the agency that will deliver primary home care.

Primary home care—In-home, nontechnical, medically related service provided by an attendant to clients whose chronic health problems cause them to be functionally limited in performing activities of daily living.

Prior approval—A decision made by the department regional nurse, before services begin and before payment can be made, that the applicant or client meets the medical criteria.

Provider agency—A home health agency that has a contract with the department to deliver primary home care.

Residential care—Services provided to eligible adults who require access to care on a 24-hour basis but not daily nursing intervention. Services may include personal care, home management, escort/transportation, room and food, and social and recreational activities. Services may be provided in personal or custodial care homes licensed by the Texas Department of Health (TDH).

RN supervisor—A nurse who is currently licensed as a registered nurse by the Texas Board of Nurse Examiners and who supervises the primary home care attendants.

Unit of service—One hour of authorized primary home care service delivered to a prior-approved client.

Waiver 5—Federally approved waiver for individuals who meet income and resources criteria for Medicaid nursing home placement in Texas and who meet functional assessment and medical criteria for primary home care.

§47.1902. *Required Services.* A provider agency must provide services that include but are not limited to:

(1) Personal care. These services include assistance with activities related to the care of the client's physical health. These activities include:

- (A) bathing;
- (B) dressing;
- (C) preparing meals;
- (D) feeding;
- (E) exercising;
- (F) grooming;

(G) caring for routine hair and skin needs;

(H) taking self-administered medication;

(I) toileting; and

(J) transferring/ambulating.

(2) Home management. These services include assistance with housekeeping activities that support the client's health and safety. These activities include:

(A) changing bed linens;

(B) housecleaning;

(C) laundering;

(D) shopping;

(E) storing purchased items;

(F) washing dishes; and

(G) arranging furniture, which includes beds, couches, dining tables, or other furniture if the caseworker decides that the moves are essential to the client's health and safety. Arranging furniture must not be provided as an ongoing task.

(3) Escort. This service includes arranging for transportation or accompanying the client on trips to obtain medical diagnosis or treatment or both.

§47.1903. *Staffing Requirements.*

(a) A registered nurse must supervise primary home care attendants in their delivery of primary home care.

(b) Attendants must:

(1) be at least 18;

(2) be neither legal nor foster parents of minor children who receive the service; and

(3) not be spouses of clients.

(c) The two types of attendants are as follows:

(1) Regular attendants. Each regular attendant must receive a general orientation as described in §47.2906 of this title (relating to Orientation of Attendants), before or at the time services begin.

(2) Special attendants. Special attendants may be used to initiate services, prevent a break in service, or provide ongoing services. Although special attendants are required to receive the general orientation specified in paragraph (1) of this subsection, they do not have to receive it in the client's home as long as they meet the following requirements.

(A) The special attendant must meet the requirements in subsection (b) of this section; and

(B) The special attendant must either:

(i) meet the requirements described in §115.13(a) and (c)-(g) of Title 25 (relating to Home Health Care Agencies); or

(ii) meet the following requirements:

(I) have six continuous months of experience in delivering personal care tasks in family care or primary home care;

(II) have demonstrated competency in providing personal care tasks to the satisfaction of the R.N. supervisor; and

(III) have received seven hours of training, conducted by a registered nurse, that addresses:

(-i-) interpersonal skills in dealing with clients and families;

(-ii-) provision of personal care tasks;

(-iii-) basic nutrition and special dietary needs; and

(-iv-) first aid, safety, and emergency procedures.
§47.1904. *Training Requirements.*

(a) Before assuming responsibilities, R.N. supervisors must receive at least seven hours of orientation that addresses all the following:

(1) basic principles of supervision;

(2) interpersonal skills in dealing with clients and families;

(3) client characteristics and needs; and

(4) policies and procedures of the Primary Home Care Program.

(b) The provider agency must document, in the R.N. supervisor's personnel record, that he received orientation before assuming supervisory responsibilities.

(c) The R.N. supervisor must sign and date a statement that he received the required orientation before assuming supervisory responsibilities.

(d) R.N. supervisors must, on an ongoing basis, assess the training needs of each attendant and develop and give training to remedy areas of deficiency.

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 April 4, 1988.

TRD-8803383

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

Eligibility Requirements

• 40 TAC §47.1906

The repeal is 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.

§47.1906. *Implementation of the Fifth Waiver Project.*

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 April 4, 1988.

TRD-8803384

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

Participation Requirements

• 40 TAC §§47.2901-47.2905, 47.2907-27.2912

The repeals 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.

§47.2901. *Prior Approval.*

§47.2902. *Referrals to Provider Agencies.*

§47.2903. *Provider Agency Requirements after Referral.*

§47.2904. *Prior Approval Decision and Initiation of Service.*

§47.2905. *Provider Agency Requirements after Verbal Referral.*

§47.2907. *Approval Renewal.*

§47.2908. *Suspension of Services.*

§47.2909. *Physician Supervision.*

§47.2910. *Provider Agency Supervision.*

§47.2911. *Attendant Training.*

§47.2912. *Supervisor 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 April 4, 1988.

TRD-8803385

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

Service Requirements

• 40 TAC §§47.2901-47.2914

The new sections 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.

§47.2901. *Referrals to Provider Agencies.*

(a) Unless a client needs a verbal referral for services, provider agencies receive written referrals based on the following priorities:

(1) client's choice;

(2) physician's choice, if stated;

and

(3) rotation of eligible providers.

(b) If the provider agency is delivering services according to the requirements in this chapter, a client may not change provider agencies until the end of the current prior approval period, unless the client and the provider agency mutually agree. This restriction does not limit the client's or provider agency's choice of attendants unless:

(1) the caseworker has specified that a particular attendant should not be employed by the provider agency; or

(2) the R.N. supervisor, caseworker, or regional nurse have determined that the attendant is not providing adequate care.

§47.2902. *Requesting Prior Approval.*

(a) Provider agencies must obtain, from the regional nurse, prior approval for applicants and clients.

(b) When a provider agency receives a referral from a caseworker, the RN supervisor must make every effort to request prior approval for the client within 14 days of the referral date on the approval for CCAD services-referral response form. The request must include the following forms:

(1) client intake;

(2) summary of client need for service;

(3) approval for CCAD services - referral response;

(4) task/hour guide worksheet;

(5) client health assessment/proposed service plan; and

(6) physician's orders for primary home care.

(c) If the provider agency cannot request prior approval within 14 days, the provider agency must notify the caseworker about the reason for delay. This notification must be sent on the case information form

within 14 days of the referral date.

(d) Before requesting prior approval, the RN supervisor must conduct an onsite nursing assessment of the client, using the client health assessment form.

(e) If the RN supervisor cannot conduct the nursing assessment within 14 days of the referral date, the provider agency must notify the caseworker about the reason for delay. The notification must be sent on the case information form, within the 14-day period.

(f) Using the proposed service plan form, the RN supervisor must develop a proposed service plan for the client. The proposed service plan must include:

- (1) the client health assessment;
- (2) the proposed service plan; and
- (3) the attendant service schedule.

(g) After the RN supervisor conducts the nursing assessment, he must obtain a physician's order by sending the physician's order form to the client's physician. If the provider agency cannot obtain the physician's order within 14 days of the referral date, the provider agency must notify the caseworker about the reason for delay by sending the case information form within the 14-day period. The case information form must include the date of the nursing assessment and must be dated after the nursing assessment date.

§47.2903. Provider Agency Requirements after Verbal Referral.

(a) When a provider agency is contacted by a caseworker, the RN supervisor must make an onsite nursing assessment of the applicant and must contact the applicant's physician to get the verbal or written physician's order.

(b) The provider agency supervisor must verbally request prior approval and give the regional nurse:

(1) a summary of the proposed service plan including:

(A) a description of the applicant's medical need for personal care tasks;

(B) results of the nursing assessment; and

(C) medical diagnosis(es);

(2) the date of the physician's verbal order for primary home care services;

(3) social assessment information and service plan recommendation developed by the caseworker; and

(4) other information the regional nurse may require.

(c) The RN supervisor documents in the client's case folder the date and time of the verbal approval and the name of the regional nurse who gave the approval.

(d) The provider agency must send prior approval forms for verbally approved services to the regional nurse in time for them to be:

(1) postmarked within 30 days of the date of verbal prior approval;

(2) stamped, in the absence of a legible postmark, as received by the department no later than 35 days of the date of verbal prior approval; or

(3) if hand-delivered, stamped as received by the department no later than 30 days of the date of the verbal prior approval.

(e) If the provider agency submits documentation that fails to support the verbal prior approval, the provider agency must submit any additional information the regional nurse requests. This additional information must be postmarked within seven days of the date of request, unless the regional nurse gives written permission for an extension.

(f) If the provider agency fails to submit prior approval forms or additional documentation within required time frames, or if the additional documentation is not adequate, the regional nurse cancels the verbal prior approval.

(g) The provider agency must begin service on the date verbally negotiated with the caseworker if the regional nurse gives prior approval, or on the date of the regional nurse verbal approval if that date is after the negotiated date.

§47.2904. Critical Omissions/Errors.

(a) If the client health assessment/proposed service plan form or the physician's order for primary home care is missing, or if any of the following critical omissions or errors has occurred in the required documentation, the provider agency cannot obtain prior approval.

(1) The RN supervisor fails to sign or date the client health assessment/proposed service plan or omits the RN credentials that should follow his signature.

(2) Major functional impairment documented on the client health assessment is not related to the medical diagnosis(es) on the form, or functional impairment is not documented.

(3) Service plan tasks are not identified on the proposed service plan form.

(4) The attendant service schedule or the total number of service hours per week is not specified on the proposed service plan form.

(5) For renewal of prior approval,

the client health assessment/proposed service plan form has a date that is earlier than 60 days before the end of the prior approval period.

(6) The medical diagnosis(es) on the physician's order for primary home care does not support the client's functional impairment.

(7) The MD or DO credential is missing from the physician's or osteopath's signature on the physician's order.

(8) The physician's order does not include the license number of the physician or osteopath who signed it.

(9) The physician who signed the order is excluded from participation in Medicare or Medicaid.

(10) The primary home care order block is not checked on the physician's order.

(11) The physician did not sign the physician's order.

(12) The physician's signature date or the provider agency's stamped date is missing from the physician's orders.

(13) The provider agency's stamped date used instead of the physician's date on the physician's orders does not include the provider agency's name, abbreviated name, or initials.

(14) For renewal of prior approval, the physician's order has a date that is earlier than 30 days before the end of the prior approval period.

(b) Corrections of critical omissions or errors in provider agency documentation must be postmarked or date stamped as received by the department within 14 days after the regional nurse mails notification of the omission or error to the provider agency. If the provider agency fails to meet this time frame, the date of prior approval can be no earlier than the postmark or department-stamped date on the corrected documentation, or the department may refer the client to another provider agency.

§47.2905. Initiation of Service.

(a) The provider agency must initiate services within seven days of the beginning date of coverage on the prior approval/confirmation of services form.

(b) The provider agency must provide services to the client according to the tasks and hours authorized on the prior approval/confirmation of services form and according to any specific schedule designated by the caseworker on the prior approval for CCAD services-referral response form.

(c) The attendant must document on the service delivery record that services are provided according to the prior approval/confirmation of services form.

(d) If the provider agency does not initiate services within the seven-day

period, the provider agency must notify the caseworker, using the case information form, by the eighth day after the beginning date of coverage on the prior approval/confirmation of services form. The notification must include the reasons for the delay and the date services are scheduled to begin.

(e) The provider agency must complete and return the approval for CCAD services-referral response form to the caseworker within 14 days from the beginning date of coverage on the prior approval/confirmation of services form. The provider agency must indicate the date services were initiated, the schedule for delivering services, the total hours authorized for the client, and the name of the attendant. §47.2906. *Orientation of Attendants.*

(a) Before or when services begin, the RN supervisor must meet with the attendant and the client in the client's home to give the attendant a general orientation about the client. The RN supervisor is not required to give this onsite orientation to the special attendant, but must give him verbal or written orientation before he goes to clients' homes.

(b) Orientation must include the following:

(1) information about the client's health condition and how it may affect the performance of tasks;

(2) tasks to be performed, work schedule, and safety and emergency procedures;

(3) symptoms or changes in the client's health status about which the attendant should notify either the RN supervisor or the attending physician; and

(4) situations that the attendant must report to the RN supervisor as soon as possible, including:

(A) client's hospitalization;

(B) changes in client's needs;

(C) client absence or move from home;

(D) client's nonreceipt of monthly Medicaid card; and

(E) attendant's inability to work scheduled hours.

(c) The RN supervisor must:

(1) complete the primary home care attendant orientation/RN supervisory form during the orientation;

(2) document that orientation was provided; and

(3) document that the attendant

is competent to perform personal care tasks before delivering services.

(d) The RN supervisor must also explain to the client and give him a written copy of the provider agency's complaint procedures. The RN supervisor must give the client a tentative date, in writing, for the first supervisory visit.

§47.2907. *Sixty-day Supervisory Visits.*

(a) The RN supervisor must make an onsite home visit to the client at least every 60 days, beginning with the client's initial assessment, and after any change in the client's condition or circumstances that may affect the tasks, hours, or continued need for services. The provider agency must notify the caseworker if these changes occur.

(b) The RN supervisor must document that the special attendant was present during each 60-day supervisory home visit and that the regular attendant was present during alternating regularly scheduled supervisor visits (at least every 120 days).

(c) During each supervisory visit, the RN supervisor must:

(1) assess the client's health and determine whether any changes have occurred in his health since the last visit;

(2) review the adequacy of the client's current service plan;

(3) assess the client's need for continued services;

(4) assess the quality of services provided by the attendant and determine whether he is performing tasks according to the prior approval/confirmation of services form; and

(5) determine the attendant's service delivery problems, training needs, and corrective action needs.

(d) The RN supervisor must conduct supervisory visits for all client's unless services are suspended during the last week of the 60-day supervisory visit cycle or services are terminated before the end of the month in which the visit is due. If services are suspended for a client and he does not receive the 60-day supervisory visit, the RN supervisor must conduct a supervisory visit within seven days after services resume.

§47.2908. *Monitoring Medicaid Eligibility.* Each month the provider agency must verify that a client has received a current medical care identification card. If the client becomes ineligible for Medicaid, the provider agency must suspend services and notify the caseworker or the caseworker's unit supervisor on the day of the suspension or the next DHS workday. §47.2909. *Physician Supervision.* The client's physician must renew his order for primary home care at least every six months.

§47.2910. *Service Breaks.*

(a) The provider agency must ensure that a client is not without services for more than 14 consecutive days after service initiation, unless:

(1) the provider agency obtains written approval from the caseworker; or

(2) the service break is caused by circumstances described in §47.2914 of this title (relating to Suspension of Services).

(b) Verbal approval for the service break must be obtained from the caseworker before obtaining written approval. The provider agency must request written approval by submitting a case information form to the caseworker within seven days of the verbal approval/disapproval date.

§47.2911. *Make-up Services.* The provider agency may provide make-up services if an attendant misses a scheduled visit and if all of the following conditions are met.

(1) The caseworker did not specify the days of service on the approval for CCAD services-referral response form.

(2) Documentation in the client's case folder indicates that the RN supervisor authorized the make-up services.

(3) The RN supervisor documented the client's agreement to receive make-up services on another day.

(4) Services that the client can do without on the scheduled visit can be made up during the same week.

(5) The provider agency notifies the caseworker with a case-information form that includes the information specified in paragraphs (1)-(4) of this subsection.

§47.2912. *Service Plan Changes.*

(a) No later than the first DHS workday after becoming aware of the change, the provider agency must verbally notify the caseworker or staff in the caseworker's office about any change that may require a service plan change or service termination. The provider agency must follow up this verbal notification with further notification in writing, to the caseworker, using the primary home care attendant orientation/RN supervisory form. Written notification must occur within seven days after verbal notification.

(b) When a caseworker initiates a service plan change, the RN supervisor must document agreement or disagreement on the primary home care attendant orientation/RN supervisory form. The RN supervisor must forward this form to the regional nurse with the approval for CCAD services-referral response form and the summary of client need for service form, if provided, within seven days of receipt of the approval for CCAD services-referral response form.

(c) The provider agency must implement service plan changes on the beginning date of coverage indicated on the prior

approval/confirmation of services form.

(d) If the caseworker notifies the RN supervisor that an immediate service plan change is needed, the RN supervisor contacts the regional nurse to discuss:

- (1) the service plan change;
- (2) the reason(s) for the immediate change; and
- (3) the effective date of the change.

(e) The RN supervisor must send the primary home care attendant/RN supervisor form to the regional nurse within 30 days of receiving verbal prior approval for a client needing an immediate service plan change. The form must include the following documentation:

- (1) the effective date of the verbal approval of the service plan change;
- (2) the service plan changes; and
- (3) the name of the regional nurse giving verbal approval.

§47.2913. Prior Approval Renewal.

(a) To request renewal of prior approval, the RN supervisor must send the following forms to the regional nurse:

- (1) summary of the client need for service;
- (2) approval for CCAD services-referral response;
- (3) task/hour guide worksheet, if received from the caseworker;
- (4) client health assessment/proposed service plan; and
- (5) physician's order for primary home care.

(b) The RN supervisor must submit the prior approval material to the regional nurse in time for it to be postmarked or date-stamped by the department on or before the termination date of the current prior approval period. If the required forms are not submitted within this time frame, a gap in client coverage occurs.

§47.2914. Suspension of Services.

(a) The provider agency must suspend services before the end of the prior approval period if one or more of the following circumstances occurs.

- (1) The client leaves the state or moves to a county in which the provider agency does not provide primary home care.
- (2) The client dies.
- (3) The client is admitted to an institution or a hospital.
- (4) The client requests that services or tasks end.
- (5) The physician requests that services end.

(6) The department denies the client's Medicaid eligibility.

(7) The caseworker and his unit supervisor concur with the provider agency that the client's services must be terminated immediately because the client threatens the health or safety of others.

(8) The department enforces sanctions against the provider agency by terminating services.

(b) The provider agency may suspend services if one or more of the following circumstances occurs.

- (1) The client racially discriminates against the attendant or the RN supervisor.
- (2) The client sexually harasses the attendant in the client's home.

(c) No later than the first DHS workday after services are suspended, the provider agency must verbally notify the caseworker or staff in the caseworker's office about the reason the agency suspended services. Written notification, on the case information form, must be sent to the caseworker within seven days of service suspension.

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 April 4, 1988.

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Marlin W. Johnston
Commissioner
Texas Department of
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Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

Claims Payment

• 40 TAC §§47.3901-47.3905

The repeals 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.

§47.3901. Provider Agency Claims Requirements.

§47.3902. Claim Rejections.

§47.3903. Records.

§47.3904. Confidentiality.

§47.3905. Vendor Hold.

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

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The new sections 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.

§47.3901. Claims Requirements.

(a) The provider agency is reimbursed based on units of authorized service delivered to a prior approved client. The provider agency must accept the department's payment as payment in full.

(b) The provider agency is not entitled to payment if:

- (1) services are not prior approved on the prior approval for CCAD services form;
- (2) the initial claim is not received in state office fiscal division within 95 days of the end of the service month;
- (3) the number of hours delivered and billed exceeds the number of hours authorized on the prior approval for CCAD services form;
- (4) the claim exceeds the actual number of hours delivered;
- (5) the provider agency fails to submit prior approval forms for verbally approved services or supporting documentation to the regional nurse within the required time frames specified in §47.2902 of this title (relating to Requesting Prior Approval);

(4) the claim exceeds the actual number of hours delivered;

(5) the provider agency fails to submit prior approval forms for verbally approved services or supporting documentation to the regional nurse within the required time frames specified in §47.2902 of this title (relating to Requesting Prior Approval);

(6) services are delivered to a client after the date services are terminated;

(7) the verbal prior approval documentation does not support the verbal approval;

(8) the attendant was not supervised by a registered nurse; or

(9) services are ordered by a physician who has been excluded from the Medicare or Medicaid program or both.

(c) The provider agency must neither charge nor take other recourse against Medicaid clients, their family members, or their representatives for any claim denied or reduced by the department because of the provider agency's failure to comply with any department rule, regulation, or procedure.

(d) The provider agency delegating signature authority to office staff or to a billing service for claims preparation is responsible for the accuracy of the claim submitted for payment.

§47.3902. Claim Rejections. If the department rejects a claim because of errors, the provider agency must research the errors and return the corrected claim to the department. If the corrected claim is submitted 95 days or more after the end of the service month, a copy of the error message must be attached to the claim.

§47.3903. Claims Payment Documentation. If monthly claims do not correspond to the provider agency's service authorizations and service delivery records, the provider agency is liable for monetary exceptions.

§47.3904. Medical Record Retention. The provider agency must keep medical records for five years from the date the last services were delivered to the client by the provider agency.

§47.3905. Vendor Hold.

(a) The department may withhold a provider agency's vendor payments for reasons including, but not limited to:

(1) failure to comply with terms of the contract; and

(2) contract termination, whether voluntary or involuntary.

(b) When a notice of a contract termination is sent to the provider agency, the department places a vendor hold on one or more of the provider agency's contracts with the department. The department may accept an irrevocable letter of credit, in a format and an amount approved by the department, to allow the release of all or a portion of vendor payments on hold.

(c) Vendor holds are released after resolution of all requested and outstanding audits or after complete resolution of any contract compliance issues, or both.

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

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◆ ◆ ◆
• 40 TAC §47.3906

The amendment is 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.

§47.3906. Claims Payment Reviews and Audits.

(a) Service delivery records. The provider agency must use the TDHS service delivery record form to document services delivered, unless it obtains written approval from the department's assistant commissioner for provider systems to use a different timesheet [instead of the TDHS form for documentation]. The provider agency must not preprint or pre-enter the time in, time out, total time, or monthly total of hours in the record of time portion of any timesheet.

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

(e) Failure to maintain records. If the provider agency fails to maintain records as specified in [§47.3903 of this chapter (relating to Records) or] §69.202 [§51.50] of this title (relating to Contractors' Records [Record Retention Requirements]), the department may initiate corrective action plans and/or monetary exceptions.

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

(h) List of administrative errors. Administrative errors include, but are not limited to, the following.

(1)-(8) (No change.)

(9) The attendant and/or time-keeper uses liquid paper/correction fluid to correct an entry in the record of time, signature, or date portion of the timesheet. The department applies the error to the total number of units claimed for the pay period.

(10)-(13) (No change.)

(14) The provider agency makes a claim for services, but a valid prior approval/confirmation of [for CCAD] services form is missing for the period claimed by the agency. The department applies the error to the total number of units claimed and not covered by a valid prior approval/confirmation of [for CCAD] services form.

(15) (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.

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◆ ◆ ◆
• 40 TAC §47.3907

The repeal is 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.

§47.3907. Limitations on Provider Charges to Patients.

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

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For further information, please call: (512)

450-3765.

◆ ◆ ◆
The new section is 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.

§47.3907. Missing Records. The provider agency may request from the department copies of missing service records. The provider agency must reimburse the department for the actual cost of reproduction, including the actual cost of staff time and equipment use and a minimal cost for each page reproduced. The provider agency must submit a written request to the contract manager for copies of records. This service does not remove the provider agency's contractual obligation to maintain records.

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

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For further information, please call: (512) 450-3765.

◆ ◆ ◆
Provider Contracts

• 40 TAC §47.4901

The repeal is 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.

§47.4901. Contracting.

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

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◆ ◆ ◆
• 40 TAC §§47.4901, 47.4903,
47.4904

The new sections 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.

§47.4901. Contracting.

(a) To contract with the department to provide primary home care services, a legal entity or one of its divisions must:

(1) be licensed by TDH as a Class A home health agency or be authorized to do business in the State of Texas by the secretary of state; and

(2) be certified for reimbursement under Titles XVIII and XIX of the Social Security Act.

(b) Provider agencies must:

(1) comply with all the provisions of the contract; the primary home care provider manual and revisions; policy clarifications and information letters; federal laws and regulations; and department rules, including any subsequent additions, deletions, and amendments to those rules;

(2) acknowledge receipt of the primary home care provider manual and subsequent revisions, contract amendments, and policy clarification letters received from the department, within 20 days of the date shown on the transmittal letter;

(3) neither subcontract any services to be performed under the contract, nor assign or transfer the contract or monies to be paid, without the written prior approval of the department;

(4) place in all its literature describing the services covered under the contract a prominent notice acknowledging the department's funding. Notice must also be placed in the provider agency's annual reports;

(5) date-stamp all written complaints received and maintain accessible available records of complaint and resolution. The provider agency must investigate and respond in writing to all written complaints received from department staff within 14 days of receipt;

(6) ensure the confidentiality of individual client's records and other information related to clients;

(7) report suspected cases of client abuse, neglect, and exploitation within 24 hours of awareness to the local CCAD unit or to the department hotline at 1-800-262-5400;

(8) notify the regional contract manager of changes in its operation, telephone number, or address; and

(9) ensure that, in connection with services, neither the provider agency nor the provider agency employees, agents, or representatives solicit or accept gifts, favors, or any other item of value from the client or other person on behalf of the client.

§47.4903. *Subcontracting.*

(a) If the provider agency intends to subcontract, it must obtain written prior approval from the assistant commissioner for the provider services branch.

(b) All subcontractors must meet the same requirements as the prime contractor.

(c) A subcontract does not terminate the legal responsibility of the prime contractor.

§47.4904. *Contract Assignments.*

(a) If the provider agency plans to assign a contract, the assignor must inform the department's provider services branch, in writing, about its intent to assign a contract. This notification must include the legal name of the entity that will be assuming the contract and must be submitted as soon as the provider agency decides to assign the contract. If the provider agency fails to provide this information in a timely manner, the contract assignment may be delayed. The department reserves the right to deny an assignment if it is not in the best interest of the department or its clients.

(b) Before an assignment is made, the assignee must follow the requirements of this subsection.

(1) Resolve all audits completed or in progress.

(2) Prepare a contract assignment agreement.

(A) The contract assignment agreement must include the following statements.

(i) Both the assignee and assignor are liable for any audit exceptions incurred and for any adverse actions taken by the department based on actions occurring during the contract period before the contract assignment. Both agencies must agree that the department reserves the right to receive restitution for any audit exceptions from either agency. Any adverse action pending or in place when the contract is assigned is applied to both the assignee and the assignor.

(ii) The assignee is responsible for collecting and reporting a full year's expense data, including the assignor's portion of the department's cost report.

(iii) The assignee adheres to the primary home care contract, reimbursement method and amount, service delivery requirements, and standards established by the department.

(iv) The assignee meets all criteria for being a provider agency of primary home care. Documentation of eligibility must be provided before the department will agree to a contract assignment.

(B) The contract assignment agreement must also:

(i) identify both legal entities;

(ii) identify the current contract number(s) and service(s) to be assigned;

(iii) be effective the first day of a month; and

(iv) be notarized and signed by the person authorized for each legal entity.

(3) Complete the following documents:

(A) Title XIX primary home care provider agreement;

(B) application for participation in the Title XIX Primary Home Care Program;

(C) corporate board of directors resolution (for corporation only); and

(D) disclosure of ownership and control interest statement.

(4) Submit the following documents:

(A) a copy of the TDH letter that confirms the Class A number belonging to the assignee;

(B) a copy of the letter from the National Heritage Insurance Company (NHIC) that confirms the assignee's participation in the Title XIX Medicaid Program; and

(C) a copy of one of the following forms:

(i) if the assignee is a corporation, the certificate of incorporation issued by the secretary of state, identifying the corporate charter number of the assignee;

(ii) if the assignee is a limited partnership, the certificate of limited partnership;

(iii) if the assignee is a general partnership, the general partnership agreement. If none exists, attach a statement to that effect;

(iv) if the entity is out of state, the authorization that allows the entity to do business in Texas.

(c) If a contract assignment application does not meet all the requirements or does not include all the required documents, the department considers it unacceptable and returns it to the assignee. The effective date of the contract assignment is the first day of the month after the application has been fully processed.

(d) If the assignee does not meet the conditions for contracting, or if the Class A license is assigned to another agency on or before the date the contract is assigned, the department immediately terminates the assignor's contract and transfers all clients to another provider agency.

This agency hereby certifies that the proposal

has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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Support Documents

• 40 TAC §47.5901

The amendment is 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.

§47.5901. Reimbursement Methodology for Primary Home Care Services.

(a) Cost reporting. Provider agencies must submit financial and statistical information at least annually on cost report forms provided by TDHS or on facsimiles which are formatted according to TDHS specifications and are preapproved by TDHS staff.

(1)-(11) (No change.)

(12) Recordkeeping requirements. Provider agencies must maintain records according to the requirements stated in §69.202 [§51.50] of this title (relating to Contractors' Records [Record Retention Requirements]). Provider agencies must ensure that records are accurate and sufficiently detailed to support the financial and statistical information contained in cost reports.

(13) (No change.)

(b)-(e) (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.

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Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

• 40 TAC §47.6902

The new section is 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.

§47.6902. Sanctions.

(a) In addition to the reasons specified in §79.2105 of this title (relating to Grounds for Fraud Referral and Administra-

tive Sanction), the department may take sanctions against the provider agency for failure to acknowledge, within the required time frame, receipt of the primary home care provider manual, and revisions, contract amendments, and policy clarifications.

(b) In addition to the sanctions specified in §79.2112 of this title (relating to Administrative Sanctions and Actions), the department may place a hold on client referrals to the provider agency.

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

Issued in Austin, Texas, on April 4, 1988.

TRD-8803395

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

Chapter 48. Community Care for Aged and Disabled

Definitions

• 40 TAC §48.1201

The Texas Department of Human Services (TDHS) proposes amendments to §48.1201 and §48.2918, concerning definitions of program terms, and eligibility for primary home care, and new §48.2908, concerning implementation of the fifth waiver project, in its community care for aged and disabled chapter. The amendments and new section clarify definitions and client eligibility requirements and incorporate eligibility information that the department is simultaneously proposing to delete from its primary home care chapter.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for units of state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Packard 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 consolidation into one chapter of all eligibility requirements for primary home care. 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 Rossberg, Administrator, Policy Development Support Division-240, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The amendment is 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.

§48.1201. Definitions of Program Terms. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Expedited response to request for services—A face-to-face contact with the applicant by a department caseworker within five calendar days of the date of the applicant's request for services when the department intake person identifies that the applicant needs this type of response.

Immediate response to request for primary home care service plan change—A review of the client's situation by the caseworker and initiation of verbal approval procedures within 24 hours from the hour of request or by the next DHS workday.

Immediate response to request for services—A face-to-face contact with the applicant by a department caseworker within 24 hours of the applicant's request for services when the department intake person identifies that the applicant needs this type of response.

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 April 4, 1988.

TRD-8803396

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

The Texas Department of Human Services (DHS) proposes amendments to §48.1201, 48.2906, and 48.2907, concerning definitions of program terms and need in its community care for aged and disabled chapter. This proposal would allow emancipated minors to receive CCAD services without regard to age, thereby preventing gaps in service.

Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections 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 sections.

Mr. Packard also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be more equitable treatment for emancipated minors, which is consistent with the fact that in many areas minors have the same rights and responsibilities as adults. 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 Support Division-629, Texas Department of Human Services 222-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Hu-

man Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§48.1201. Definitions of Program Terms. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Adult—A person 18 [years old] or older, or an emancipated minor.

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 April 4, 1988.

TRD-8803396

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: June 15, 1988
For further information, please call: (512) 450-3765.

◆ ◆ ◆
Eligibility

◆ ◆ ◆
• 40 TAC §48.2906, §48.2907

The amendments are proposed under the Human Resources Code, Chapters 22 and 32, Title 2, which provides the department with the authority to administer public and medical assistance programs.
§48.2906. Age.

(a) Except as specified in subsections (b) and (c) of this section persons must be at least 18 [years old or older] to receive [meet the age requirement for] CCAD [Title XX] services.

(b) Persons may receive the following CCAD Medicaid services without regard to age:

- (1) primary home care;
- (2) day activity and health services; and
- (3) residential health care.

(c) Emancipated minors may receive CCAD services without regard to age. *§48.2907. Need.*

(a) The client needs assessment questionnaire is used to determine an individual's functional need for CCAD services.

[Score on Client
Needs Assessment

Need Indicator

[26+

Severe mental or physical impairment resulting in severe social and health needs.

[18-25

Mental or physical impairment resulting in chronic dependency on others in the performance of essential household and personal care tasks.

[9-17

Mental or physical impairment that prevents the client from performing essential household and personal care tasks.]

(b) (no change.)

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

Issued in Austin, Texas, on April 4, 1988.

TRD-8803400

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: June 15, 1988

For further information, please call: (512) 450-3765.

§48.2908. Implementation of the Fifth Waiver Project. Under waiver from the Department of Health and Human Services, DHS may provide primary home care services to individuals who meet institutional medical assistance only requirements, but who do not live in institutions.

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 April 4, 1988.

TRD-8803397

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

◆ ◆ ◆
• 40 TAC §48.2918

The amendment is 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.
§48.2918. Eligibility for Primary Home Care.

(a) Applicants/clients for primary home care services must meet all of the following eligibility criteria [for program eligibility and medical need]. The applicant/client must:

(1) be eligible for Medicaid outside an institution or be eligible as a Waiver V client;

(2) (No change.)

(3) have a medical need for assistance with personal care [the service]. The client's [He must have a] medical condition must be [.] substantiated by symptoms and a physician's diagnosis(es) [diagnosis, which requires medically oriented tasks. The applicant must have an unmet need for partial or total help with personal care tasks. He must be oriented to time, place, and person unless the department regional nurse decides that he is not a threat to himself or others, or if someone is

available to care for him when the attendant is not in the home]. The medical condition must be the cause of the client's functional impairment in performing personal care tasks. Although mental illness and mental retardation are not considered medical conditions, they do not disqualify a client for eligibility as long as the client's functional impairment is related to a coexisting medical condition.

(4) have a signed and dated physician's order [orders] for primary home care; [.] The physician must sign and date the orders. The physician must include in his orders:

[(A) diagnosis and present condition;

[(B) treatment;

[(C) prescribed medications, dosage, and frequency;

[(D) nutritional requirements;

[(E) mental status;

[(F) safety or precautionary measures;

[(G) functional limitations and permitted activities;

[(H) prognosis; and

[(I) length of time the applicant needs services.

(5) have a service plan that links tasks to the applicant's unmet needs.]

(6) require at least six hours of primary home care per week. An applicant/client requiring fewer than six hours per week may be eligible if he meets at least one of the following criteria:

(A) scores at least 30 [or above] on the client needs assessment questionnaire and primary home care is essential to provide respite care to the caregiver or to enable the applicant/client to remain in the community;

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

(b) To receive services, the applicant/client must reside in a place other than:

(1) a hospital;

(2) a skilled nursing facility;

(3) an intermediate care facility;

(4) a personal care home, except in a facility that contracts with the department to deliver residential care services; or

(5) any other environment where family members or sources outside the primary home care program are available to provide personal care.

(c) An eligible applicant or client cannot receive more than 30 hours of primary home care per week.

(d) An applicant or client must have prior approval for primary home care from the department regional nurse. Prior approval for primary home care is valid for up to six months from the date the physician signs the orders.

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 April 4, 1988.

TRD-8803398

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Proposed date of adoption: July 1, 1988

For further information, please call: (512) 450-3765.

Part IX. Texas Department of Aging

Chapter 267. Title III Nutrition Services Standards

• 40 TAC §267.1, §267.2

The Texas Department on Aging proposes amendment to §267.1 and §267.2, concerning Title III nutrition service standards. These amendments incorporate into the nutrition service standards changes which have been made in the Older Americans Act, Title III, during the last reauthorization of this Act.

Charles Hubbard, director, Fiscal Department, 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.

Alex Guerra, director, Program Department, 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 provision of services authorized under the Older Americans Act, Title III, to individuals identified as eligible for these services as a result of amendment of the Act. 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 Edwin R. Floyd, Program Liaison, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The amendments are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

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

Disabled person—An individual with a disability attributable to mental or physical impairment, or a combination of mental and physical impairments, that results in substantial functional limitation of major life activity.

Greatest economic need—Needs that are the result of income levels at [near] or below the poverty threshold.

Greatest social need—Needs that are caused by [associated with] non-economic factors which include physical and mental disabilities, language barriers, and cultural, [or] social, or geographical isolation, including that caused by racial or ethnic status, which restrict an individual's ability to perform normal tasks or which threaten such individual's [one's] capacity to live independently.

§267.2. *Congregate Nutrition Services Program Description.*

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

(d) **Eligibility.** Any person 60 years or over, and the spouse of that person, regardless of age is eligible for participation. Eligibility is further described by the following criteria.

(1) Disabled persons under 60 years of age may receive services in accordance with a uniform and consistent areawide policy if they reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided or who reside at home with and accompany older eligible individuals.

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

(e) (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 March 29, 1988.

TRD-8803244

O. P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Earliest possible date of adoption: May 9, 1988

For further information, please call: (512) 444-2727

Chapter 295. Registration of Board and Lodging Homes

Statutes and Regulations

• 40 TAC §§295.1, 295.3, 295.5

The Texas Department on Aging proposes new §§295.1, 295.3, and 295.5, concerning

registration of board and lodging homes. The sections comply with House Bill 168, 70th Legislature, 1987, relating to personal care homes and lodging homes for senior citizens or disabled persons. These sections require providers of board and lodging services to register with the Texas Department on Aging prior to September 1, 1988 and each year thereafter by that date.

Charles Hubbard, fiscal director, has determined that there will be fiscal implications as a result of enforcing or administering the sec-

tions. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$7,000 for fiscal year 1988. There is no anticipated cost to state government for fiscal years 1989-1992. There will be no fiscal implications for local governments. The cost of compliance with the sections for small businesses will be \$10 per annum for each board and lodging home registering with the Texas Department on Aging. The \$10 per annum registration fee will be a greater percentage of small board and lodging home's operational costs than of large board and lodging home's operational costs. In either instance, however, cost per employee, hours of labor, and per \$100 of sales will be minimal.

John Willis, director of the advocacy division, 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 that consumers, social service providers, and housing providers will have access to a comprehensive listing of board and lodging home resources for senior citizens and disabled clients. 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 Edwin R. Floyd, Program Liaison, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new sections are proposed under Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate laws governing the operation of the department.

§295.1. Registration of Board and Lodging Homes.

(a) Purpose. The purpose of this section is to provide guidelines for the registration of board and lodging homes located in the State of Texas to implement the requirements established by House Bill 168, 70th Legislature, 1987, relating to board and lodging homes for senior citizens or disabled persons.

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

(1) Board and lodging home—An establishment that provides room and board to a total of four or more senior citizens or disabled persons unrelated to the proprietor.

(2) Department—The Texas Department on Aging.

(3) Disabled person—A person who has a physical or mental impairment that substantially limits one or more major life activities.

(4) Senior citizen—A person 60 years of age or older.

§295.3. Registration Requirements and Procedures.

(a) Initial registration. Each board and lodging home for senior citizens or disabled persons will register with the department not later than September 1, 1988.

(b) Annual registration. Each board and lodging home for senior citizens or disabled persons will register annually with the department. The registration period will be from September 1 to August 31 each year.

(c) Information required. Each board and lodging home will provide to the department, on a form provided by the department, the following information;

(1) name and ownership of the facility;

(2) location and mailing address of the facility;

(3) phone number of the facility;

(4) whether or not the facility is receiving state or federal subsidies;

(5) number of senior citizen, disabled, and other people housed at the time of registration; and,

(6) total capacity of the facility.

(d) Payment of fees. Each board and lodging home registering with the department will pay a fee of \$10. This fee will be in the form of check or money order, made payable to the Texas Department on Aging, and will be submitted with the information required in subsection (c) of this section.

(e) Procurement of forms. Registrations forms may be obtained by calling the Texas Department on Aging, 1-800-252-9240 or writing to the Texas Department on Aging, P.O. Box 12786, Austin, Texas 78871. Completed forms must be returned prior to September 1 of each year.

(f) Advertising. Advertising associated with board and lodging homes shall have the following disclaimer: "This home is registered with the Texas Department on Aging, but is not inspected, licensed, or otherwise regulated by the State of Texas." *§295.5. Texas Department on Aging Responsibilities.*

(a) Establish a registry of board and lodging homes. The Texas Department on Aging will publish a registry of board and lodging homes on an annual basis.

(1) The registry will contain the information provided for in §295.3(c) of

this title (relating to Registration Requirements and Procedures).

(2) The registry will be made available to the public, the Texas Department of Mental Health and Mental Retardation, the Texas Department of Human Services, the Texas Department of Health, and other state and federal offices which require access to this information.

(3) The general public may request a copy of this publication by writing to the Texas Department on Aging, Advocacy Department, P.O. Box 12786, Austin, Texas 78711.

(b) Public information and education. The department shall conduct an ongoing information and education program to inform the public regarding the registration process and requirement and the definition of a registered board and lodging home through ongoing contacts with membership and advocacy groups and its network of area agencies on aging.

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 April 1, 1988.

TRD-8803401

O. P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Earliest possible date of adoption: May 9, 1988

For further information, please call: (512) 444-2727



Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 13. CULTURAL RESOURCES

Part IV. Texas Antiquities Committee

Chapter 41. Practice and Procedure

13 TAC §§41.1, 41.3-41.13, 41.16, 41.17, 14.19-14.23, 41.25-41.27

The Texas Antiquities Committee has withdrawn from consideration for permanent adoption proposed new sections which appeared in the January 22, 1988, issue of the *Texas Register* (13 TexReg 375). The effective date of this withdrawal is March 31, 1988.

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 March 31, 1988.

TRD-8803296 Molly F. Godwin
Administrative Technician
Texas Antiquities
Committee

Filed: March 31, 1988

For further information, please call: (512) 463-6098



13 TAC §§41.3-41.18, 41.20, 41.22, 41.24, 41.26

The Texas Antiquities Committee has withdrawn from consideration for permanent adoption proposed repeals which appeared in the January 22, 1988, issue of the *Texas Register* (13 TexReg 386). The effective date of this withdrawal is March 31, 1988.

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 March 31, 1988.

TRD-8803297 Molly F. Godwin
Administrative Technician
Texas Antiquities
Committee

Filed: March 31, 1988

For further information, please call: (512) 463-6098



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

• **34 TAC §3.548**

The Comptroller of Public Accounts has withdrawn the emergency effectiveness of the amendment to §3.548, concerning the bingo regulation and tax. The text of the emergency amendment appeared in the November 27, 1987, issue of the *Texas Register* (12 TexReg 4444). The effective date of this withdrawal is April 1, 1988.

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 April 1, 1988.

TRD-8803318

Filed: April 1, 1988

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



• **34 TAC §3.554**

The Comptroller of Public Account has withdrawn the emergency effectiveness of the amendment to §3.554, concerning the bingo regulation and tax. The text of the emergency amendment appeared in the December 11, 1987, issue of the *Texas Register* (12 TexReg 4616). The effective date of this withdrawal is April 1, 1988.

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 April 1, 1988.

TRD-8803323

Filed: April 1, 1988

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



• **34 TAC §3.555**

The Comptroller of Public Accounts has withdrawn the emergency effectiveness of the amendment to §3.555, concerning the bingo regulation and tax. The text of the emergency amendment appeared in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4878). The effective date of this withdrawal is April 1, 1988.

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 April 1, 1988.

TRD-8803320

Filed: April 1, 1988

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



• **34 TAC §3.556**

The Comptroller of Public Accounts has withdrawn the emergency effectiveness of amendment to §3.556, concerning the bingo regulation and tax. The text of the emergency amendment appeared in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4878). The effective date of this withdrawal is April 1, 1988.

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 April 1, 1988.

TRD-8803325

Filed: April 1, 1988

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



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 I. State Finance Commission

Chapter 3. Banking Section

Subchapter A. Securities Activities and Subsidiaries

• 7 TAC §3.7

The Finance Commission of Texas, Banking Section, adopts new §3.7, with changes to the proposed text published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 672). The only change is that the effective date is changed from April 1, 1988, to April 20, 1988.

This new section establishes a regulatory framework that governs a state bank's establishment of acquisition of subsidiaries to engage in activities permitted for the parent bank or bank holding companies. The statutory authority that allows state banks to establish such subsidiaries is set forth in Texas Civil Statutes, Article 342-513.

The section requires that, prior to the establishment or acquisition of a subsidiary, a state bank file an application the banking commissioner on forms he prescribes. The applicant shall identify the specific statutory authority that allows the business activities planned for the proposed subsidiary.

No comments were received regarding adoption of the new section.

This new section is adopted under Texas Civil Statutes, Articles 342-113 and 342-513, which provide the Banking Section with authority to promulgate rules and regulations not inconsistent with the Constitution and statutes of this state, and from time to time amend same, which rules and regulations shall be applicable to all state banks and bank subsidiary corporations.

§3.7. Applications for Creation of Bank Subsidiaries—De Novo Establishment or Acquisition.

(a) Texas Civil Statutes, Article 342-503, provide that a bank subsidiary corporation may perform those functions that a state bank or a bank holding company may perform under the laws of this state. A state bank subsidiary may engage in those activities presently authorized, or which may be granted to bank holding companies, under the provisions of the Bank Holding Company Act, 12 United States Code Annotated §1841-1849 (West Supplement 1987); regulations promulgated by the Board of Govern-

ors of the Federal Reserve System (presently such regulations are codified at 12 Code of Federal Regulations, Part 225); or any present or future orders, regulations, or interpretations issued by the Board of Governors concerning activities that are so closely related to banking or controlling banks as to be a proper incident thereto. A bank subsidiary may engage in permissible activities at any location that is authorized for a bank holding company.

(b) An application shall be filed with the banking commissioner (hereinafter commissioner), on forms he prescribes, if a state bank plans to establish or acquire a subsidiary to engage in activities permitted for a bank or a bank holding company or subsidiaries thereof. In any application in which applicant proposes to engage in an activity permitted for bank holding companies, applicant shall identify the specific statutory or regulatory provisions authorizing the proposed activity. The commissioner, as the primary regulator of state-chartered banks, shall approve applications to acquire or establish such bank subsidiaries if:

(1) in the opinion of the commissioner, there are no significant supervisory problems with respect to the applicant which would affect its ability to properly operate such subsidiary; and

(2) the application for the proposed bank subsidiary complies with the provisions of Texas Civil Statutes, Article 342-513.

(c) A bank subsidiary shall be subject to examination and regulation by the commissioner as if it were a state bank.

(d) Investment limitations for subsidiaries that are set forth in Texas Civil Statutes, Article 342-513, shall not apply if the activities of the subsidiary are limited to those that may be engaged in directly by the parent bank.

(e) This section shall apply to the establishment or acquisition of bank subsidiaries on or after April 20, 1988.

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 March 30, 1988.

TRD-8803259

Jorge A. Gutierrez
General Counsel
Department of Banking

Effective date: April 20, 1988

Proposal publication date: February 9, 1988

For further information, please call: (512) 479-1200

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 115. Extension of Duties of Auxiliary Personnel

• 22 TAC §115.10

The Texas State Board of Dental Examiners adopts new §115.10, without changes to the proposed text published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 756).

The board is adopting this section pertaining to registration of dental personnel who administer X-rays pursuant to the mandates set forth in Senate Bill 1439.

Any person performing radiologic procedures under the supervision of a dentist must register with the Texas State Board of Dental Examiners. This section will not apply to persons certified under the Medical Radiologic Technologist Certification Act.

The board received comments from two individuals. One comment suggested that there were some omissions in the section, especially with respect to ADA accredited dental assisting programs. The other comment referred to exempting students in dental assisting programs.

The board did not have time to discuss these proposals at this meeting. They will take these suggestions under advisement and discuss them as possible amendments to the adopted section.

The new section is adopted under Texas Civil Statutes, Article 4551d, which provides the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

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 March 30, 1988.

Effective date: April 23, 1988

Proposal publication date: February 9, 1988

For further information, please call: (512)
834-6021◆ ◆ ◆
**Part IX. State Board of
Medical Examiners****Chapter 179. Investigation
Files**• **22 TAC §179.6**

The Texas State Board of Medical Examiners adopts new §179.6, with changes to the proposed text published in the February 16, 1988, issue of the *Texas Register* (13 TexReg 828).

The new section outlines reporting responsibilities for those required to report medical professional liability claims and related information. The medical professional liability claim report form is shown.

Compliance with the medical professional liability claims report form as shown, or by an alternate reporting format as stated in subsection (d), will aid the board in receiving the required information.

The board was requested to allow for more insurance company processing time and to omit the form question regarding initial reserve amount. There were comments that the section requiring reporting of claims is of no benefit and unnecessary.

Two individual physicians commented against the section, and suggestions regarding the form were made by Akin, Gump, Strauss, Hauer & Feld.

Regarding promulgation of the section, the board is required by law to seek the stated information. Regarding the question of initial reserve amount, it was felt that some useful information could be obtained from leaving it in the form. The board accepted suggestions to allow the insurance companies additional processing time.

The new section is adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act. *§179.6. Reporting Medical Professional Liability Claims.*

(a) Reporting responsibilities. The reporting form must be completed and forwarded to the Texas State Board of Medical Examiners for each defendant physician against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing medical professional liability insurance for a physician. If a nonadmitted insurance carrier does not report, reporting shall be the responsibility of the physician.

(b) Separate reports required and identifying information. One separate report shall be filed for each defendant insured physician. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in subsection (d)(1) of this section.

(c) Timeframes and attachments. The information in Part I of the form must be provided within 30 days of receipt of the claim or suit. A copy of the claim letter or petition must be attached. The information

in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed.

(d) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data.

(1) If the reporter elects to use a reporting format other than the board's form for data required in Part II, there must be enough identification data available to enable board staff to match the closure report to the original file. The data required to accomplish this include:

(A) name and license number of defendant physician(s); and

(B) name of plaintiff.

(3) A court order or settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

(e) Penalty. Failure by a licensed insurer to report under this section shall be referred to the State Board of Insurance. Sanctions under the Insurance Code, Article 1.10, § 7, may be imposed for failure to report.

(f) The reporting form shall be as follows.

TEXAS STATE BOARD OF MEDICAL EXAMINERS
P.O. Box 13562, Capitol Station
Austin, Texas 78711

MEDICAL PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PHYSICIAN.

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE TEXAS STATE BOARD OF MEDICAL EXAMINERS WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer: _____

2. Defendant physician: _____
License number: _____
3. Plaintiff's name: _____
4. Policy number: _____
5. Date claim reported to insurer/self-insured physician: _____
6. Type of complaint: _____ claim only _____ lawsuit
7. Initial reserve amount after investigation: _____
(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with T.S.B.M.E.)

Person completing this report

Phone number

PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH T.S.B.M.E. WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C.

8. Date of disposition: _____
9. Type of Disposition:
_____ (1) Settlement
_____ (2) Judgment after trial
_____ (3) Other (please specify) _____
10. Amount of indemnity agreed upon or ordered on behalf of this defendant:
\$ _____. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: \$100,000/3)
11. Appeal, if known: _____ Yes _____ No. If yes, which party: _____

Person completing this report

Phone number

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 April 1, 1988.

TRD-8803311

G.V. Brindley, Jr., M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: April 21, 1988

Proposal publication date: February 16, 1988

For further information, please call: (512) 452-1078

Part XXII. Texas State Board of Public Accountancy

Chapter 523. Continuing Professional Education

Registered Continuing Education Sponsors

• 22 TAC §523.73

The Texas State Board of Public Accountancy adopts the new §523.73, with changes to the proposed text published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 759).

The new section gives the board authority to audit continuing education courses, to preclude granting of credit for substandard courses being offered.

The new section sets out the obligations of sponsors and provides the board with the authority to audit continuing education courses.

No comments were received regarding adoption of the new section.

The new section is adopted 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 the obligation of continuing education sponsors to the Texas State Board of Public Accountancy and the penalty for failure to impart acceptable standards.

§523.73. Obligations of the Sponsor. In consideration for registration as a sponsor of continuing education, every organization shall agree, in writing, to the following.

(1) We understand that after acceptance of the application or reapplication by the board we may advise prospective attendees of the program to sponsor agreement, our sponsor number, and the number of credit hours recommended. We further agree that if we notify licensees of this agreement we shall do so by use of the following language. "We have entered into an agreement with the Texas State Board of Public Accountancy to meet the requirements of continuing education rules covering maintenance of attendance records, retention of program outlines, qualifications of instructors, program content, physical fa-

ilities, and length of class hours. This agreement does not constitute an endorsement by the board as to the quality of the program or its contribution to the professional competence of the licensee."

(2) We understand that our advertising shall not be false or misleading, nor contain words such as "accredited" or "approved" or any terms which may imply that a determination has been made by the board regarding the merits or quality of the program.

(3) We agree the board members, board staff, or its official designees may inspect our facilities, examine our records, attend our courses or seminars at no charge, and audit our program to determine compliance with the sponsor agreement and the continuing education standards of the board.

(4) We understand and agree that if we fail to comply with this agreement or fail to meet acceptable standards in our programs, our sponsor agreement may be terminated at any time by the board, our sponsor agreement renewal application denied, and notice of such termination or denial may be provided to licensees by the board.

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

Issued in Austin, Texas, on March 29, 1988.

TRD-8803360

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

Effective date: April 22, 1988

Proposal publication date: February 12, 1988

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

• 22 TAC §523.74

The Texas State Board of Public Accountancy adopts new §523.74, with changes to the proposed text published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 760).

The new section authorizes the board to audit continuing education courses to preclude the granting of credit for substandard courses being offered by some sponsors.

The new section specifies that the board is to accept courses offered by sponsors shown to be in good standing with NASBA's national registry of CPR sponsors.

No comments were received regarding adoption of the new section.

The new section is adopted 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 acceptance by the board of sponsors of continuing education courses registered with the NASBA National Registry of Continuing Education Sponsors.

§523.74. National Registry of CPE Sponsors. The board shall accept courses offered by sponsors shown as being in good standing on the National Association of State Boards of Accountancy's national registry of CPR sponsors; however, organizations are not required to register with the National Association of State Board of Accountancy. Organizations that elect to register with this board shall adhere to the obligations of the sponsor identified in §523.73 of this title (relating to Obligations of the Sponsor), and to the standards promulgated by this board.

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

Issued in Austin, Texas, on March 28, 1988.

TRD-8803359

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

Effective date: April 22, 1988

Proposal publication date: February 12, 1988

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

• 22 TAC §523.74

The Texas State Board of Public Accountancy adopts new §523.74, with changes to the proposed text published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 760).

The new section authorizes the board to audit continuing education courses to preclude the granting of credit of substandard courses being offered by some sponsors.

The new section specifies that the board is to accept courses offered by sponsors shown to be in good standing with NASBA's national registry of CPE sponsors.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 41a, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to acceptance by the board of sponsors of continuing education courses registered with the NASBA national registry of continuing education sponsors.

§523.74. National Registry of CPESponsors. The board shall accept courses offered by sponsors shown as being in good standing on the National Association of State Boards of Accountancy's national registry of CPE sponsors; however, organizations are not required to register with the National Association of State Boards of Accountancy. Organizations that elect to register with this board shall adhere to the obligations of the sponsor identified in §523.73 or this title (relating to Obligations of the Sponsor), and to the standards promulgated by this board.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 28, 1988.

TRD-8803359

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

Effective date: April 22, 1988

Proposal publication date: February 12, 1988

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

TITLE 34. PUBLIC FINANCE

Part III. Teacher Retirement System of Texas

Chapter 23. Administrative Procedures

• 34 TAC §23.3

The Teacher Retirement System of Texas adopts the repeal of §23.3, without changes to the proposed text published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 696).

The repeal allows for the adoption of a new chapter of procedural rules related to adjudicative hearings.

The effect of the repealed section is to allow a new chapter to be added.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Title 110B, §35.102, which provide the board of trustees with the authority to adopt rules necessary to transact its business; and Article 6252a, §4(a)(1), which require agencies to adopt rules of procedure of adjudicative hearings.

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

Issued in Austin, Texas, on March 24, 1988.

TRD-8803247

Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: April 20, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 397-6478

Chapter 25. Membership Credit Compensation

• 34 TAC §25.32

The Teacher Retirement System of Texas (TRS) adopts new §25.32, without changes to the proposed text published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 696).

The conversion rule of §25.30 operates to exclude from annual compensation, as defined in Texas Civil Statutes, Title 110B, §31.001(4) and §32.201, any noncreditable amounts which are converted into otherwise creditable salary and wages during the last seven creditable school years of employment before retirement. In providing a limited exception to the operation of the conversion rule, the new section provides an equitable solution to the seven-year application of the conversion rule to compensation programs for nonteaching personnel established in good faith by school districts in the wake of the confusion surrounding the impact on retirement credit of the career ladder provisions of House Bill 72.

The effect of the new section affords equitable relief to persons excluded from the provisions of the teacher career ladder who have received a noncreditable supplement under such career-ladder like programs and who have since retired, who are now retiring, or who retire within seven years of the date the noncreditable supplement was last received. The new section applies to conversion only and does not make amounts creditable that are excluded by statute from credit because they are lump sum bonuses.

No comment were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Title 110B, §35.102, which provide authority to the board of trustees to adopt rules to transact business, and §35.110, which authorizes the board to adopt rules to prevent the conversion of noncreditable compensation to creditable compensation in the years immediately before retirement.

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 March 24, 1988.

TRD-8803249

Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: April 20, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 397-6478

Chapter 29. Benefits

Limitations

• 34 TAC §29.50-§29.51

The Teacher Retirement System of Texas (TRS) adopts new §29.50 and §29.51. Section 29.50 is adopted with changes to the proposed text published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 697). Section 29.51 is adopted without changes and will not be republished. Section 29.50 is changed to add annual compensation to the definitions because of its importance in relationship to other definitions named.

The new sections are implemented to comply with the limitations of the Internal Revenue Code of 1954, §415, as amended, for contin-

ued tax qualified status.

The new sections set the required limitations on retirement benefits, defines the terms commonly used in the section, and provides notice to members of the limitations.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Title 110B, §35.102, which provide authority to the board of trustees to adopt rules necessary to transact its business, and §35.506, which provide authority to the board of trustees to adopt rules necessary to comply with the plan qualification requirements of Internal Revenue Code.

§29.50. Definitions. The following words and terms, when used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Annual compensation—Compensation that the Code, §415, and applicable federal regulations permit to be considered in determining benefit limitations of qualified plans.

Code—The Internal Revenue Code of 1954, as amended.

Defined contribution plan—A plan as defined in the Code, §414(i).

Employer—The state or any of its designated agents or agencies or political subdivisions responsible for education.

Member contributions—Those mandatory contributions within the meaning of the Code, §411(c)(2)(C), exclusive of any contributions that are picked up by the employer under the Code, §414(h).

Plan Year—The plan's accounting year beginning on September 1 of each year and ending on the following August 31.

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 March 24, 1988.

TRD-8803246

Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: April 20, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 397-6478

Chapter 43. Adjudicative Hearings

• 34 TAC §43.1-43.47

The Teacher Retirement System of Texas (TRS) adopts new §§43.1-43.47, issued without changes to the proposed text published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 698).

These new sections define what decisions by agency staff are subject to review by an adjudicative hearing, explain the procedures to be followed in an adjudicative hearing, and provide notice of the appropriate forum used to review individual complaints.

The effect of these sections will be a clearer understanding of terms used in the administrative procedure and provide an appeals process for individuals not satisfied with the initial administrative determination on a matter subject to appeal through an adjudicative hearing.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Title 110B, §35. 102, which provide authority to the board of trustees to adopt rules necessary to transact its business; and Article 6252-13a, §4(a)(1), which require agencies to adopt rules of procedure for adjudicative hearings.

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

Issued in Austin, Texas, on March 24, 1988.

TRD-8803248 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: April 20, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 397-6478

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XI. Texas Juvenile Probation Commission Chapter 341. Texas Juvenile Probation Commission

• 37 TAC §341.1

The Texas Juvenile Probation Commission adopts an amendment to §341.1 with changes to the proposed text published in the January 12, 1988, issue of the *Texas Register* (13 TexReg 243). The change replaces the word "decision" with the word "recommendation" throughout the section when referring to the action taken by the juvenile board to make it clear that the commission makes the final decision.

This section provides procedures by which a juvenile probation officer's certificate may be revoked for a violation of the code of ethics for juvenile probation officers.

Under this section, the preliminary investigation and recommendation concerning revocation of a juvenile probation officer's certification is made by the juvenile board. The juvenile board's recommendation is followed by the commission, unless the probation officer appeals the commission and the commission finds the juvenile board's recommendation is arbitrary, capricious, unlawful, or not supported by substantial evidence.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §75.0423, which requires

that the Texas Juvenile Probation Commission prescribe procedures by which a juvenile probation officer's certificate may be revoked for violation of the code of ethics.

§341.1. *Establishing Code of Ethics for Juvenile Probation Officers and Providing for Enforcement of Code.*

(a) (No change.)

(b) Code of ethics for Texas juvenile probation officers—enforcement procedures.

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

(A) Board—The juvenile board.

(B) Chairman—The juvenile board chairman.

(C) Chief—The chief administrative officer.

(D) Commission—The Texas Juvenile Probation Commission.

(E) Officer—The certified juvenile probation officer.

(2) The local hearing. The chief will investigate each report of a violation of the code of ethics. If the allegation is against the chief, the board shall appoint another person to perform the duties of the chief under this section.

(A) If the chief finds reasonable cause to believe an officer has violated the code of ethics, the chief shall give the officer written notice of the section or sections of the code allegedly violated, a statement of the evidence relied upon, and the chief's recommendation to the board for action. If the chief recommends that the board ask the commission to revoke an officer's certification, the officer has 10 days after receiving the notice to make a written request for a hearing before the board. If the officer fails to request a hearing, the board shall take such action as it deems lawful and appropriate and shall notify the officer of its recommendation in writing within 15 days of the expiration of the 10 day period for requesting a hearing.

(B) The board shall hold a hearing within 15 days after receiving written notice from the officer requesting the hearing, unless the board, the chief, and the officer all agree to a delay. The officer shall be given notice of the hearing date as soon as it is set.

(C) The hearing shall be con-

ducted in closed session with only the members of the board, a court reporter, the officer, the chief, their representatives, and such witnesses as may be called in attendance, unless the officer requests that it be open. Witnesses may be excluded from the hearing until it is their turn to present evidence. The officer and the chief may each be represented by a person designated in writing to act for him. Notices at least five days in advance of the hearing shall be given by each party intending to be represented, including the name of the representative. Failure to give such notice may result in postponement of the hearing.

(D) The conduct of the hearing shall be under the chairman's control, and in general, shall follow the steps listed in clauses (i)-(vi) of this subparagraph.

(i) The hearing shall begin with the chief's presentation, supported by such proof as he desires to offer.

(ii) The officer may cross-examine any witnesses for the chief.

(iii) The officer may then present such testimonial or documentary proof as desired in rebuttal or in support of the contention that the code of ethics has not been violated.

(iv) The chief may cross examine any witnesses for the officer and offer rebuttal to the testimony of the officer's witnesses.

(v) Closing arguments may be made by each party.

(vi) A record of the hearing shall be made so that a certified transcript can be prepared if required.

(E) The board may consider only such evidence as is presented at the hearing. After all the evidence has been presented, the board must determine whether the allegation against the officer is supported by substantial evidence and notify the officer in writing within 10 days of the hearing. The notice must include:

(i) which acts or omissions by the officer, if any, violated the code of ethics;

(ii) a statement of the evidence relied upon;

(iii) a state of which section or sections of the code of ethics, if any, were violated by the acts or omission of the officer;

(iv) the recommendation of the board to the commission concerning revocation of the officer's certificate; and

(v) the officer's right to appeal the board recommendation to the commission by giving the board written notice of this intent to appeal its recommendation within 10 days of his receipt of the

board's recommendation.

(3) Acceptance and revocation. The commission shall follow the recommendation of the board concerning the revocation of an officer's certification at its next regularly scheduled meeting, unless the officer appeals the board's recommendation to the commission. The commission shall notify the board and the officer of its decision.

(4) Appeal to the commission. If the officer is aggrieved by the recommendation of the board, he may appeal to the commission by giving the board written notice of his intent to appeal its recommendation within 10 days of his receipt of the board's recommendation. The commission shall hear the appeal at its next regularly scheduled meeting after the record of appeal has been filed and all questions about its accuracy have been resolved. The commission may not substitute its judgment for that of the board, unless it finds the recommendation of the board was arbitrary, capricious, unlawful, or not supported by substantial evidence.

(A) All allegations by an officer that the recommendation of the board was arbitrary, capricious, unlawful, or not supported by substantial evidence shall be resolved by a review of the record of appeal; however, on the motion of either the officer or the board, the commission may order that additional evidence be taken to supplement the transcript if it appears that the officer or board has evidence to offer which is material, relevant, and not unduly repetitious, which that party, for good cause, was unable to adduce at the local hearing.

(B) Within 30 days of the date on which it is notified the officer wishes to appeal, the board must file the record of appeal with the commission. The record must include:

(i) the chief's notification to the officer of the allegation that the code of ethics has been violated;

(ii) the chief's recommendations to the board concerning certificate revocation;

(iii) the officer's request for a hearing before the board;

(iv) the board's notification to the officer that the code of ethics was violated, including:

(I) a statement of the evidence received or considered;

(II) a statement of matters officially noticed; and

(III) all documents

and exhibits filed in the board hearing;

(v) the recommendation of the board; and

(vi) a certified transcription of the hearing before the board.

(C) The board shall provide the officer with written notice when the record of appeal is prepared and shall make the record available to the officer for inspection. The board shall provide the officer with copies of all items in the record of appeal other than the transcript. A copy of the transcript shall be provided to the officer for a reasonable charge upon request.

(D) The record of appeal filed by the board shall be considered to be complete and accurate and shall be admitted into evidence before the commission for all purposes, unless the officer files objections to the record, which set forth specifically those items which are relevant and material and which have been erroneously omitted from the record or those portions of the record which are relevant and material but which have been accurately transcribed, within 30 days of the date of the filing of the record. The commission shall conduct a proceeding for the purpose of receiving evidence relevant to any such challenge to the record if it appears that the matter in dispute is material to the outcome of the appeal.

(E) Allegations by the officer that the recommendation of the board was arbitrary, capricious, or unlawful must allege sufficient facts which would support a holding that the board's recommendation was arbitrary, capricious, or unlawful even if it should also be held that the recommendation was supported by substantial evidence. If such allegations are not made, no cause of action will be stated with regard to these claims.

(F) Upon either party's request, the commission shall afford both parties the opportunity to present oral argument concerning the merits of the appeal.

(G) The commission may substitute its judgment for that of the board when the board's recommendation was arbitrary, capricious, unlawful, or not supported by substantial evidence.

(H) The commission may remand any appeal to the board for further proceedings if the interests of justice so require.

(I) The commission shall notify the officer of its decision in writing within 30 days after it has reached a decision.

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 March 23, 1988.

TRD-8803258

Bill Anderson
Executive Director
Texas Juvenile Probation
Commission

Effective date: April 20, 1988

Proposal publication date: January 12, 1988

For further information, please call: (512) 443-2001

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
Chapter 49. Child Protective Services

Subchapter U. Services to Truants and Runaways Program

• **40 TAC §§49.2105, 49.2106, 49.2110, 49.2111**

The Texas Department of Human Services (DHS) adopts amendments to §§49.2105, 49.2106, 49.2110, and 49.2111. The amendment to §§49.2110 is adopted with changes to the proposed text published in the February 5, 1988, issue of the *Texas Register* (13 TexReg 594). The amendments to §§49.2105, 49.2106, and 49.2111 are adopted without changes and will not be republished.

The amendments are justified to achieve a more consistent application of statewide policy and services in the Services to Truants and Runaways program.

The amendments will function by clarifying for contractors the minimum standards for casework/counseling and emergency residential care and the requirements for certified local resources compliance and funding.

Although no comments were received regarding adoption of the amendments, the department initiated an editorial change to the language in §49.2110 to clarify and improve the accuracy of the section. In paragraph (1)(E), the words "unless prohibited by" were substituted for "if allowed by" to clarify that federal funds are allowable sources of certified local resources unless prohibited by federal laws.

The amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

§49.2110. *Certified Local Resources Requirements.* Contracts must comply with the requirements of §69.237 of this title (relating to Certified Local Resources) and the following.

(1) Allowable sources of certified local resources include the following;

(A)-(D) (No change.)

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

(4) For billing purposes, fees for services to eligible clients are not considered when determining the cost of services and submitting monthly billing documents to DHS for reimbursement. Contractors must reimburse the department for any fees they collected that exceed the amount of the required certified local cash match.

(5) (No change.)

(6) Unallowable matches include the following:

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

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

Issued in Austin, Texas, on March 31, 1988.

TRD-8803272 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: May 16, 1988

Proposal publication date: February 5, 1988

For further information, please call: (512) 450-3765

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department on Aging

Chapter 255. State Delivery Systems

Area Agency Designation

• 40 TAC §255.35

The Texas Department on Aging adopts an amendment to §255.35, without changes to the proposed text published in the January 22, 1988, issue of the *Texas Register* (13 TexReg 403).

This amendment incorporates the directions of the Texas Board on Aging into the Texas Administrative Code regarding duty titles of full time area agency on aging chiefs.

Individuals selected to perform the duties of the full time director of area agencies of aging will be known under the same titles throughout the state.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the department.

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 March 28, 1988.

TRD-8803245 O.P. (Bob) Bobbitt
Executive Director
Texas Department on
Aging

Effective date: April 20, 1988

Proposal publication date: January 22, 1988

For further information, please call: (512) 444-2727
◆ ◆ ◆

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 billeting 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*.

Anatomical Board of the State of Texas

Friday, May 6, 1988, 10:15 a.m. The Anatomical Board of the State of Texas, will meet in the Boardroom, Sixth Floor, Baylor College of Dentistry Building, Baylor College of Dentistry. According to the agenda summary, the board will approve minutes of the 1987 meeting; hear reports of the secretary/treasurer; review cadaver procurement and use 1986-1987 interim cadaver report for 1987-1988 and financial report for 1986-1987 and interim financial report for 1987-1988; consider transfer of cadaver policies, reciprocity agreement for out of state transfer, aids policy, invitations for host of 1989 meeting, inspections of Baylor College of Dentistry's Anatomy Facility, and conclusions of unfinished business.

Contact: Andrew F. Payer.

Filed: April 1, 1988, 9:03 a.m.

TRD-8803329

Texas Commission on the Arts

Saturday, April 9, 1988, 1 p.m. The Music Public Hearing of the Texas Commission on the Arts will be held at the Capitol Marriott Hotel, 701 East 11th Street, Austin. According to the agenda, the hearing will take recommendations from a discipline perspective modifications to the existing state plan. Any interested parties may attend and will be given five minutes to present their concerns to the commission. While the purpose is primarily to take testimony on music modifications, anyone may comment on any portion of the state arts plan. Copies of the state arts plan are available through the commission offices and will be available at the public hearing.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 31, 1988, 4 p.m.

TRD-8803298

Wednesday, April 13, 1988, 1 p.m. The Visual Arts Public Hearing of the Texas

Commission on the Arts will meet in the Worthington Hotel, Fort Worth. According to the agenda, the hearing will take recommendations from a discipline perspective on modifications to the existing state arts plan. Any interested parties may attend and will be given five minutes to present their concerns to the commission. While the purpose is primarily to take testimony on visual arts modifications, anyone may comment on any portion of the state arts plan. Copies of the state arts plan are available through the commission offices and will be available at the public hearing.

Contact: Betty J. Brown, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: March 31, 1988, 4 p.m.

TRD-8803299

Texas Bond Review Board

Friday, April 8, 1988, 9 a.m. The Staff Planning Meeting of the Texas Bond Review Board will meet in the Lieutenant Governor's Committee Room, State Capitol, Austin. According to the agenda, the board will approve minutes of previous staff meeting; consider proposed bond issues concerning Texas Water Development Board's issue of up to \$70,000,000 Texas water development bonds and State Purchasing and General Services Commission's lease/purchase of automatic call distribution system, and other business.

Contact: Tom K. Pollard, Sam Houston Building, Room 711G, Austin, Texas, (512) 463-1741.

Filed: March 31, 1988, 1:32 p.m.

TRD-8803289

Texas Department of Commerce

Tuesday, April 12, 1988, 9:30 a.m. The Board of Directors of the Texas Department of Commerce will meet in Tandy Lecture Hall, Fort Worth Public Library, 300 Taylor Street, Fort Worth. According to the agenda

summary, the board will approve minutes of the previous meeting; consider appointment of Advisory Committee for Small Business; approve policy on conflict of interest, policy on conflict of interest-private donors, operating procedures of the board, and three enterprise zone applications; and hear presentations on export financing, marketing and media, small business, and Fort Worth Chamber of Commerce.

Contact: Mary Lane, Texas Department of Commerce, (512) 320-9660

Filed: March 31, 1988, 1:29 p.m.

TRD-8803288

Friday, April 15, 1988, 8:30 a.m. The Worker Readjustment Committee, SJTCC of the Texas Department of Commerce will meet in the Austin Marriott Hotel, North IH 35 and U.S. Highway 290 East. According to the agenda summary, the committee will host a planning conference on Title III planning guidelines to solicit comments from the public and to review the state fiscal year 1988 JTPA Title III planning guidelines and consider action concerning recommendation to the full council.

Contact: Andres Tijerina, Texas Department of Commerce (512) 834-6131.

Filed: March 31, 1988, 11:13 a.m.

TRD-88a03287

Texas Department of Community Affairs

Thursday, April 21, 1988, 4 p.m. The National Community Volunteer Fire Prevention Advisory Committee of the Texas Department of Community Affairs will meet at the meeting room, Dairy Queen, Highway 181, Pettus. According to the agenda, the committee will approve minutes of the previous meeting; consider proposed Beaumont annual conference, Washington D.C. trip expense, application to Administration on Aging; hear national community volunteer fire prevention program reports, and meet with Pettus Rotary Club for a program presentation.

Contact: Rudy Davila, 8317 Cross Park Drive, Austin, Texas 78754-5124, (512) 834-6027.

Filed: April 4, 1988, 8:55 a.m.

TRD-8803408

Texas State Board of Examiners of Professional Counselors

Wednesday, April 13, 1988. The Texas State Board of Examiners of Professional Counselors will meet at the Austin Airport Hilton and Towers, 6000 Middle Fiskville Road, Austin. Times and agendas follow.

9 a.m. The Rules and Specialties Committee will discuss licensing of counseling specialties.

Contact: Marilyn Preusse, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: April 1, 1988, 9:03 a.m.

TRD-8803331

Wednesday, April 13, 1988, 10 a.m. The Professional Relations Committee will discuss the next issue of the board newsletter.

Contact: Marilyn Preusse, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: April 1, 1988, 9:03 a.m.

TRD-8803334

11 a.m. The Licensing, Renewals, Ethics, Licenser Certificates, Supervisors Committee will discuss requirements for supervisors of license applicants' counseling experience and an application form for supervisor status.

Contact: Marilyn Preusse, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: April 1, 1988, 9:03 a.m.

TRD-8803330

1 p.m. The board will approve minutes of the January 25, 1988 meeting; hear committee reports concerning applications, complaints, revocations, suspensions, fees and budget; testing and continuing education; licensing, renewals, ethics, license certificates, supervisors; rules and specialties; professional relations; and public relations; consider reciprocity, cancellation of licenses due to nonrenewal, licensure applications and procedures; reviews of disapproved files (applicants with disapproved files may appear for review of their applications); consider other matters relating to the licensure and regulation of professional counselors not involving board action and setting of next meeting date.

Contact: Marilyn Preusse, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7511.

Filed: April 1, 1988, 9:03 a.m.

TRD-8803333

Court Reporters Certification Board

Saturday, April 16, 1988, 8:30 a.m. The Court Reporters Certification Board will meet in the Conference Room, 510 South Congress Avenue, Austin. According to the agenda, the board will consider application for certification 3861; approve minutes of the previous meeting; consider statistical information from previous examination; hold preliminary review in cause 88101201; consider reinstatement applications; discuss fiscal year 1990-1991 proposed budget; review information pamphlet and rule booklet; and consider fiscal year 1988 expenditures and other business that may come before the board. The board also will grade the licensing examinations during executive session.

Contact: Peggy Liedtke, 510 South Congress Avenue, Suite 312, Austin, Texas 78704, (512) 463-1630.

Filed: April 1, 1988, 9:05 a.m.

TRD-8803336

Texas Education Agency

The State Board of Education of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. Dates, times, and agendas follow.

Friday, April 8, 1988, 8 a.m. The Committee for Finance and Programs submitted an emergency revised agenda to consider rules concerning textbook depository status. The emergency status was necessary because the agency finds that the potential financial instability of a textbook depository constitutes an unforeseeable emergency situation requiring immediate action by the agency.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, Texas, (512) 463-8985.

Filed: April 1, 1988, 3:59 p.m.

TRD-8803378

Saturday, April 9, 1988, 8:30 a.m. The board submitted a revised agenda to consider rule concerning textbook depository status.

Contact: W.N. Kirby, 1701 North Congress Avenue, Austin, (512) 463-8985.

Filed: April 1, 1988, 4 p.m.

TRD-8803377

Tuesday, April 12, 1988, 10:30 a.m. The Price Differential Index Advisory Committee of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue,

Austin. According to the agenda, the committee will review price differential index methodologies and basic correlation data; discuss data and procedures for PDI; consider market basket developments; discuss directions for other charges set by the State Board of Education.

Contact: Joe Wisnoski, 1701 North Congress Avenue, Room 3-101, Austin, Texas, (512) 43-9704.

Filed: April 4, 1988, 1:57 p.m.

TRD-8803415

General Land Office

Friday, April 8, 1988, 3:30 p.m. The Veterans Land Board of the General Land Office will meet in Room 831, Stephen F. Austin Building, Austin. According to the agenda summary, the board will approve minutes of the February 23, 1988, meeting; consider reinstatement of the farm and ranch finance program, adoption of amended rules for the farm and ranch finance program, adoption of a rule authorizing a program to sell Type II forfeited land tracts through real estate brokers, adoption of permanent rule concerning delinquencies and forfeiture procedures, and of August 31, 1988, as the date of the next forfeited land sale.

Contact: Jack Giberson, Stephen F. Austin Building, Room 836-A, Austin, Texas, (512) 463-5340.

Filed: March 31, 1988, 10:16 a.m.

TRD-8803282

Texas Department of Health

Wednesday, April 13, 1988, 1 p.m. The Medical Radiologic Technologists Advisory Board of the Texas Department of Health will meet in The Oakwood Room, Austin Airport Hilton, IH-35 at Highland Mall, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the board will approve minutes of the February 18, 1988, meeting; discuss action regarding continuing education concerns and questions and categories of limited certificate; review, discuss and comment on proposed and emergency rules adopted by other agencies pursuant to Texas Civil Statutes, Article 4512m; and consider other matters relating to the certification of medical radiologic technologists not requiring advisory board action and set the next meeting date.

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7275.

Filed: April 4, 1988, 8:56 a.m.

TRD-8803407

Wednesday, April 13, 1988, 2 p.m. The Advisory Council on Massage Therapy of

the Texas Department of Health will meet in the Palmer Board Room, Austin Hilton Inn, IH-35 at Highland Mall, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the council will approve minutes of the September 25, 1987, meeting; hear School Committee report; and consider matters relating to the registration and regulation of massage therapists (not requiring advisory council action), and setting of next meeting date.

Contact: Becky Berry, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7512.

Filed: April 1, 1988, 9:04 a.m.

TRD-8803332

Wednesday, April 13, 1988, 2 p.m. The Respiratory Care Practitioners Advisory Board of the Texas Department of Health will meet in the Westlake Room, Austin Airport Hilton, I-35 at Highland Mall, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the board will approve minutes of the February 19, 1988, meeting; hear program administrator's report and chairperson's report; consider action on applications disapproved by the program administrator; review final draft of proposed amendments to rules and regulations 25 TAC §§123.1-123.14; and consider other matters relating to the certification of respiratory care practitioners (not requiring advisory board action), and setting of next meeting date.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7631.

Filed: April 4, 1988, 3:24 p.m.

TRD-8803432

Texas Housing Agency

Wednesday, April 6, 1988. The Texas Housing Agency met in Suite 300, 811 Barton Springs Road, Austin. Times and agendas follow.

11 a.m. The Finance and Audit Committee considered and acted on a resolution authorizing the signing of agency documents and deposits. The emergency status was necessary because the items are needed to provide decent, safe, and sanitary housing for Texans of low and moderate income.

Contact: Ken DeJarnett, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: April 1, 1988, 2:43 p.m.

TRD-8803370

2 p.m. The Board of Directors submitted an emergency revised agenda to consider resolution authorizing the signing of agency documents and deposits and discuss internal audit and relationship with state auditor. The board also met in executive session to consider and possibly act on personnel con-

nected with state auditor. The emergency status was necessary because the emergency items are needed to provide decent, safe, and sanitary housing for Texans of low and moderate income.

Contact: Ken DeJarnett, P.O. Box 13941, Austin, Texas 78704, (512) 474-2974.

Filed: April 1, 1988, 2:43 p.m.

TRD-8803369.

Texas Industrial Accident Board

Monday, April 4, 1988, 9:30 a.m. The Texas Industrial Accident Board met in Room 107, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board approved minutes of the previous meeting; reviewed and discussed fiscal year 1988 current expenditures and budget and first half fiscal year 1988 performance and funds management report; discussed and considered staff proposal for merit evaluation procedure and board activities. The board also met in closed session to review board files pursuant to workers' compensation statute.

Contact: Inez "Tippy" Foster, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7960.

Filed: March 31, 1988, 2:50 p.m.

TRD-8803294

State Board of Insurance

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

Tuesday, April 5, 1988, 10 a.m. The board submitted an emergency revised agenda to discuss personnel matters concerning office of general counsel and chief clerk. The emergency status was necessary to provide for most effective operation of the responsibilities of the board.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 1, 1988, 3:51 p.m.

TRD-8803375

Tuesday, April 5, 1988, 10 a.m. The board submitted an emergency revised agenda to consider adoption on an emergency basis of rules concerning administration of the licensing and examination of third party administrators as 28 TAC §§7.1601-7.1621 after consideration of recommendations from an advisory committee including representatives of persons subject to regulation. The emergency status was necessary to provide regulated entities as rapidly as possible with knowledge of regulatory provisions under recent legislation.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 1, 1988, 3:50 p.m.

TRD-8803376

Monday, April 11, 1988, 2 p.m. The board will meet in Room 414, to discuss consultant proposals received on proposed study of worker's compensation insurance experience rating and recommendations for decision, and consideration of possible selection and award of contract.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 1, 1988, 3:50 p.m.

TRD-8803374

Tuesday, April 12, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9869-Application for amendment to articles of incorporation of White Life Insurance Company, Wichita Falls, moving the home office, increasing the authorized capital, and providing for indemnity of a director.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 4, 1988, 4:07 p.m.

TRD-8803424

Tuesday, April 12, 1988, 10 a.m. The board will meet in Room 414, to consider motions for rehearing in the matter of public hearing on private passenger automobile rates and rating plans, filing by insurance services office of a revision of Texas changes pesticide or herbicide applicator coverage endorsement, revised servicing company contract between Texas Medical Liability Insurance Underwriting Association and the Medical Protective Company, extension of emergency effectiveness of amendment to 28 TAC §5.2003 and of new 28 TAC §1.406, and board orders on several matters; consider personnel matters concerning Fire Marshal, Statistical and Rate Development, Research and Information Services, and Commissioner; consider litigation matters concerning personnel and Commissioner; consider appointment to Texas Life, Accident, Health and Hospital Service Guaranty Association and annual assessment by National Association of Insurance Commissioners.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 4, 1988, 3:08 p.m.

TRD-88038435

Tuesday, April 12, 1988, 10:30 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9868-Application for amendment to articles of incorporation of Citizens Fidelity Insurance

Company, Waco, designating a registered agent and providing for indemnity of a director.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 4, 1988, 4:07 p.m.

TRD-8803426

Wednesday, April 13, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9855-Whether disciplinary action should be taken against Ramon P. Leal, Raymondville, who holds a group II, health and accident insurance agent's license (00124982) and a local recording agent's license (0077760)

Contact: O.A. Cassity, III, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 4, 1988, 4:06 p.m.

TRD-8803426

Monday, April 18, 1988, 9 a.m. The Commissioner's Hearing Section will meet in Room 342, to consider Docket 9863-Application of Billy Hale, Longview, for a group I, legal reserve life insurance agent's license.

Contact: Earl Corbett, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 4, 1988, 4:06 p.m.

TRD-8803427

Monday, April 18, 1988, 1:30 p.m. The Commissioner's Hearing Section will meet in Room 353, to consider Docket 9876-Application for original charter of Cumberland Casualty and Surety Company, Pasadena.

Contact: J.C. Thomas, 1110 San Jacinto Street, Austin, Texas, 78701-1998, (512) 463-6526.

Filed: April 4, 1988, 4:06 p.m.

TRD-88033428

Special Committee on Organization of State Government

Thursday, April 14, 1988, 9 a.m. The Subcommittee on Economic Development/Regulatory/Local Affairs of the Special Committee on Organization of State Government will meet in Room 109, Reagan Building, 105 West 15th Street, Austin. According to the agenda summary, the committee will hear testimony taken from invited representatives of the agencies the subcommittee is reviewing. The subcommittee will also begin working on preliminary recommendations and submit them to the full committee.

Contact: Anya Haidusek, Rep. Stiles Office, (512) 463-0706.

Filed: April 1, 1988, 10:29 a.m.

TRD-8803353

Pan American University

Friday, April 15, 1988. The Board of Regents of Pan American University will meet in the boardroom, Administration Building, Pan American University, Edinburg. Times and agendas follow.

10 a.m. The Buildings and Grounds Committee will consider approval for science building sprinkler system bid, approval for MR&R requests-higher education assistance fund, and informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas, (512) 381-2100.

Filed: April 4, 1988, 1:50 p.m.

TRD-8803416

10:15 a.m. The Finance Committee will consider budget changes, approval of consultant contract with National Rural Development and Finance Corporation, approval to increase prices in vending machines, approval of vehicle insurance bids, approval of gas contract, approval of Apple Computer contract, and informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas, (512) 381-2100.

Filed: April 4, 1988, 1:50 p.m.

TRD-8803417

10:30 a.m. The Development Committee will consider informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas, (512) 381-2100.

Filed: April 4, 1988, 1:50 p.m.

TRD-8803418

10:45 a.m. The Brownsville Committee will consider budget changes, approval of computer conversion-higher education assistance fund, approval of table of programs, and president's informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas, (512) 381-2100.

Filed: April 4, 1988, 1:50 p.m.

TRD-8803419

11 a.m. The Academic Affairs Committee will consider approval of revised table of programs, approval for consultant-valley psychological clinic, and information items. The committee will also meet in executive session to consider personnel items concerning request for professor emeritus, tenure recommendations-PAU-B and PAU-E, status of vice president for business affairs,

hiring of associate vice president, and presentation by board's contract review committee consultant pursuant to Texas Civil Statutes, Article 6252-17, §2(g).

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas, (512) 381-2100.

Filed: April 4, 1988, 1:50 p.m.

TRD-8803420

11:15 a.m. The board will approve minutes of the executive session meetings of February 12, 1988, and March 23, 1988; discuss, consider, and act on board committee reports and recommendations, consultant contract to review university contracts, CEED revolving loan fund resolution, leasing space to the Reynaldo Garza Law School, Reynaldo Garza School of Law resolution, appointment of committees, merger possibilities for Pan American University, election of officers, president's informational items, and set date for next meeting. The board will also discuss, consider, and act on executive session items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas, (512) 381-2100.

Filed: April 4, 1988, 1:50 p.m.

TRD-8803414

Board of Pardons and Paroles

Monday-Friday, April 11-15, 1988, 1:30 p.m. daily, except 11 a.m. on Friday. The Board of Pardons and Paroles 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/inmates and administrative releases subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: April 1, 1988, 10:37 a.m.

TRD-8803355

Tuesday, April 12, 1988, 1:30 p.m. The Board of Pardons and Paroles will consider executive clemency recommendations and related actions (other than out of country conditional pardons), including: full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentences; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: April 1, 1988, 10:37 p.m.

TRD-8803354

Polygraph Examiners Board

Thursday-Saturday, April 14-16, 1988, 9 a.m. The Polygraph Examiners Board will meet in the Inn of the Hills, Kerrville. According to the agenda, the board will approve minutes of the November 1987 and January 1988, meetings; consider applications for licensure, disciplinary hearings on complaint B1-01-fiscal year 1988, adoption of amendments to regulations 395.4 and 395.13, and any other polygraph related business that may come before the board.

Contact: Debbie Speicher, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: March 31, 1988, 2:01 p.m.

TRD-8803293

Texas State Board of Public Accountancy

Thursday, March 31, 1988, 4 p.m. The Texas State Board of Public Accountancy met in emergency session in Suite 340, 1033 La Posada, Austin. According to the agenda, the board considered retired 515.8 concerning retired status and 521.8 concerning retired fee. The emergency status was necessary because of recommendation of assistant attorney general, based on Attorney General's Opinion JM-873.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: March 31, 1988, 11:08 a.m.

TRD-8803284

Texas Public Finance Authority

Thursday, April 14, 1988, 10 a.m. The Texas Public Finance Authority will meet in Room 104, Reagan Building, 105 West 15th Street, Austin. According to the agenda, the finance authority will approve minutes of the previous meeting; hear financial reports; consider settlement of charges for bond counsel and financial adviser and status report on staff study; consider status of projects, selection of bond counsel and paying agent/registrars for forthcoming issue, and set date and time of next meeting.

Contact: Ann Moriarty, 201 East 14th Street, Austin, Texas 78701, (512) 463-5544.

Filed: March 31, 1988, 4:19 p.m.

TRD-8803300

Public Utility Commission of Texas

The Public Utility Commission of Texas

will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Dates, times, and agendas follow.

Wednesday, April 27, 1988, 10 a.m. The Hearings Division will consider Docket 8030-Application of Southwestern Bell Telephone Company for revisions to 976 tariff.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 31, 1988, 2:51 p.m.

TRD-8803295

Thursday, May 5, 1988, 10 a.m. The Hearings Division will consider Docket 8046-Complaint of Exxon Company, USA against Houston Lighting and Power Company requesting a determination as to the justness and reasonableness of certain tariff provisions.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 4, 1988, 2:40 p.m.

TRD-8803423

Railroad Commission of Texas

Tuesday, April 12, 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 Administrative Services Division will consider and act on the division director's report on division administration, budget, procedure, and personnel matters, including but not limited to discussion, and/or action on the following: management study, oil and gas general counsel, oil field investigator personnel and their operations, the creation and designation of an executive director with related positions and matters, and personnel matters relating to the office of general counsel and special counsel.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7527.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803344

The Automatic Data Processing Division will consider and act on the 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: April 1, 1988, 10:14 a.m.

TRD-8803350

The Flight Division will consider and act on the division director's report on division administration, budget, procedures and per-

sonnel matters.

Contact: Ken Fossler, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6787.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803345

The Gas Utilities Division will consider various matters within the regulatory jurisdiction of the Railroad Commission of Texas. 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 or date.

Contact: Shelley A. Dreiling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7009.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803341

The Office of General Counsel will consider and act on the general counsel's report on division administration, budget, procedures, and personnel matters; including but not limited to discussion and/or action on the following: Hufo Oils, et al v. Railroad Commission C-5937 in the Supreme Court of Texas, Walker Operating, et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698 et al in relation of Oil and Gas Docket 10-87,017; FERC Orders 500, 500 A-C, and related litigation in the D.C. fifth, third, and seventh circuits.

Contact: Gail Watkins, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6921.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803339

The Office of Information Services will consider and act on the Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78704, (512) 463-6710.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803348

The Investigative Division will consider and act on the 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: April 1, 1988, 10:22 a.m.

TRD-8803349

LP-Gas Division will consider and act on division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6931.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803340

The Oil and Gas Division will consider docket 8-91,824-Application of Mobil Producing Texas and New Mexico, Inc. for temporary field rules, wildhorse (upper canyon) field, Howard County.

Contact: David Traian, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7307.

Filed: April 1, 1988, 11:50 a.m.

TRD-8803357

Contact: Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803382

The Oil and Gas Division 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: Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7325.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803351

The Oil and Gas Division 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: April 1, 1988, 10:14 a.m.

TRD-8803343

The Personnel Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803338

The Office of Research and Statistical Analysis will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803347

The Office of Special Counsel will consider and act on division director's report relating to state and federal legislation, budget, administrative and personnel matters, and proposed and pending litigation.

Contact: Walter E. Lillie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803346

The Surface Mining Division 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: Jerry Hill, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6900.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803342

The Transportation Division 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 or date.

Contact: C. Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: April 1, 1988, 10:14 a.m.

TRD-8803352

Texas Water Commission

The Texas Water Commission will meet in the Stephen F. Austin Building, 105 West 15th Street, Austin, unless otherwise noted. Dates, times, rooms, and agendas follow.

Monday, April 11, 1988, 10 a.m. the Office of Hearings Examiner will meet in Room 246, to consider application 5165 of Damson Oil Corporation, P. O. Box 1557, Breckenridge, Texas 76024, for a permit pursuant to §11.121 of the Texas Water Code.

Contact: Leslie A. Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: March 31, 1988, 4:15 p.m.

TRD-8803316

Tuesday, April 12, 1988, 10 a.m. The commission will meet in Room 118, to consider municipal utility district bond issues, use of surplus funds, release of funds from escrow, application for rate increase, cancel and amendments of certificate of convenience and necessity, amendments and renewals of water quality permits, requests for authorization to commence construction, production area authorization, waste disposal well amendments, water right application to amend adjudication, applications for extension of time to commence and complete construction on a dam and project authorized by water rights permits, matters of forfeiture and abandonment of water rights, consideration of approving the report as an adopted revision to the state of Texas water quality management plan and recommending certification by the governor to EPA, and authorization of executive director to amend contract with Woodward-Clyde Consultants for the Bio Ecology Superfund project.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 1, 1988, 4:05 p.m.

TRD-8803379

Tuesday, April 12, 1988, 2 p.m. The commission will meet in Room 118, to consider adoption of amendments to 31 TAC §§335.201, 335.202, and 335.204; consider executive director's preliminary report and petition for an order requiring certain actions of American Chrome and Chemical, Inc.

Contact: Karen A. Phillips, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 1, 1988, 4:05 p.m.

TRD-8803380

Monday, April 25, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 246, to consider application 5164-Millsap Water Supply Corporation, P.O. Box 158, Millsap, Texas 76066, for a permit pursuant to §11.121 of the Texas Water Code.

Contact: Steve Dickman, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875

Filed: March 31, 1988, 4:15 p.m.

TRD-8803317

West Texas State University

Friday, April 8, 1988, 10:30 a.m. The Board of Regents of West Texas State University met in emergency session in Room 211, Virgil Henson Activities Center, West Texas State University, Canyon. According to the agenda, the board discussed panhandle-plains historical museum fiscal year 1989 funding and organizational operation and any necessary action thereon and

considered examination of administration/faculty/staff relationships and action thereon. The board also met in executive session as authorized by Texas Civil Statutes, Article 6252-17, §2f and §2g, to consider museum personnel, funding for museum personnel, and university personnel. The emergency status was necessary due to reasonably unforeseen situations requiring immediate action.

Contact: Texas Smith, West Texas State University, Canyon, Texas 79016, 656-2100.

Filed: April 5, 1988, 9:04 a.m.

TRD-8803448

Texas Youth Commission

Thursday, April 7, 1988, 9 a.m. The Texas Youth Commission submitted an emergency revised agenda for a meeting held in Suite 322, 8900 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission considered revision of policy on discharge of youth and adult probation. The emergency status was necessary because an increase in the number of offenses by institutionalized 17 year old youth creates an urgent public necessity that the commission rule, requiring discharge of such youth when they are placed on adult probation, be immediately reviewed.

Contact: Ron Jackson, P.O. Box 9999, Austin, Texas 78766.

Filed: April 4, 1988, 4:12 p.m.

TRD-8803431

Regional Meetings

Meetings Filed March 31, 1988

The Dawson County Central Appraisal District, Board of Directors, met at 920 North Dallas Avenue, Lamesa, on April 6, 1988, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060.

The Wise County Appraisal District, Board of Directors, will meet in the Boardroom, 206 South State, Decatur, on April 14, 1988, at 9 a.m. Information may be obtained from Brenda Jones, 206 South State Street, Decatur, Texas 76234, (817) 267-3081.

TRD-8803286

Meetings Filed April 1, 1988

The Barton Springs-Edwards Aquifer Conservation District, Board of Directors, met in Suite F, 909 North Loop 4, Buda, on April 4, 1988, at 7 p.m. Information may be obtained from Larry G. Hada, 909 North

Loop 4, Suite F, Buda, Texas 78610, (512) 282-8441.

The Dallas Area Rapid Transit, Special Board Meeting and Minority Affairs Committee, met at 601 Pacific Avenue, Dallas, on April 4, 1988, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Eastland County Appraisal District, Board of Directors, will meet in the Commissioner's Courtroom, Eastland County Courthouse, on April 13, 1988, at 1 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448.

The Education Service Center, Region III, Board of Directors, will meet at 1905 Leary Lane, Victoria, on April 11, 1988, at 1 p.m. Information may be obtained from Julius Cano, 1905 Leary Lane, Victoria, Texas 77901.

The Jasper County Appraisal District, Board of Directors, will meet in the Jasper ISD Administration Building, 128 Park Street, Jasper, on April 13, 1988, at 7 p.m. Information may be obtained from David W. Luther, County Courthouse Annex, Jasper, Texas 75951, (409) 384-2544.

The Mills County Appraisal Review Board, met in the Mills County Courthouse, Goldthwaite, on April 7, 1988, at 9 a.m. Information may be obtained from Doran E. Lemke, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253.

The Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, on April 5, 1988, at 7 p.m. Information may be obtained from L.R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

The Trinity River Authority of Texas, Joint meeting of the Executive Committee and Administration Committee met at 5300 South Collins, Arlington, on April 7, 1988, at 10:30 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

The West Central Texas Council of Governments, Private Industry Council, met at 909 North Judge Ely Boulevard, Abilene, on April 5, 1988, at 10 a.m. Information may be obtained from Tom K. Smith, 909 North Judge Ely Boulevard, Abilene, Texas, (915) 672-8544.

TRD-8803328

Meetings Filed April 4, 1988

The Bosque County Appraisal District, Board of Directors, will meet at 104 West Morgan, Meridian, on April 11, 1988, at 4 p.m. Information may be obtained from Don Whitney, P.O. Box 393, Meridian, Texas 76665.

The Canadian River Municipal Water Authority, Board of Directors, will meet at Plainview Country Club, 2902 West Fourth, Plainview, on April 13, 1988, at 11 a.m. Information may be obtained from John C. Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325.

The Carson County Appraisal District, Appraisal Review Board, will meet at 102 Main Street, Panhandle, on April 11, 1988, at 9 a.m. Information may be obtained from Dianne Lavake, P.O. Box 970, Panhandle, Texas 79068-0970.

The Coryell County Appraisal District, Board of Directors, met at 113 North Seventh Street, Gatesville, on April 7, 1988, at 7 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593.

The Deep East Texas Private Industry Council, Inc. will meet at the Rodeway Inn, Highway 59 South, Lufkin, on April 13, 1988, at 2 p.m. Information may be obtained from W. Floyd Clark, P.O. Box 700, Coldsprings, Texas 77331, (409) 653-4564.

The Education Service Center, Region I, Board of Directors, will meet at 1900 West Schunior, Edinburg, on April 12, 1988, at 6 p.m. Information may be obtained from Lauro R. Guerra, 1900 West Schunior, Edinburg, Texas.

The Erath County Appraisal District, Board of Directors, will meet in the Boardroom, 1390 Harbin Drive, Stephenville, on April 12, 1988, at 9 a.m. Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-7301.

The Nolan County Central Appraisal District, met in Suite 317-A, Nolan County Courthouse, Sweetwater, on April 7, 1988, at 7 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The North Plains Water District, Board of Directors, met at 702 East First Street, Dumas, on April 7, 1988. Information may be obtained from Richard S. Bowers, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401.

TRD-8803381

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

Extension of Deadline for Written Comments

In the February 26, 1988, issue of the *Texas Register* (13 *TexReg* 966), the Texas Air Control Board (TACB) published a notice of public hearing on proposed amendments to be held March 31, 1988. The purpose of the hearing was to receive testimony concerning revisions to Regulation VI and the standard exemption list. The deadline for written comments as set out in the notice has been extended to April 15, 1988. All comments at the hearing, as well as written comments received by 4 p.m. on April 15, 1988, in the TACB central office in Austin will be considered by the board prior to any final decision on the proposed changes.

Copies of the proposed revisions are available at the central office of the TACB located at 6330 United States Highway 290 East, Austin, Texas 78723, and at all regional offices of the agency. For further information, call Barry Irwin at (512) 451-5711.

Issued in Austin, Texas, on April 1, 1988.

TRD-8803358 Allen Eil Bell
Executive Director
Texas Air Control Board

Filed: April 1, 1988

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



Notice of Applications for Construction Permits

Notice is given by the Texas Air Control Board (TACB) of applications for construction permits received during the period of February 1, to March 9, 1988.

Information relative to the applications listed following including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the TACB at the address stated previously and at the regional office for the air quality control region within which the proposed facility will be located.

3M, Brownwood; two thermal oxidizers; Brownwood, Brown County; 18725; new

SGS-Thompson Microelectronics, Carrollton; research and development; Carrollton, Dallas County; 18734; new

Sterling Chemicals, Texas City; sodium cyanide production facility; Texas City, Galveston County; 18736; new

Hoechst Celanese, Pampa; storage tank; Pampa, Gray County; 18737; new

Shell Oil Company/Shell Chemical, Deer Park; bisphenol-A unit number 4; Deer Park, Harris County; 18738; new

Cedar Fiber, Inc., Junction; cedarwood oil production facility; Junction, Kimble County; 18745; new

Standard Oil Chemical, Greenlake; third reactor train; Greenlake, Calhoun County; 18705; new

Amoco Oil, Texas City; FCCU Number 2 Co promoter model; Texas City, Galveston County; 18706; new

Amoco Oil, Texas City; FCCU Number 3 Co promoter model; Texas City, Galveston County; 18707; new

Cain Chemical Inc., Alvin; cogeneration facility; Alvin, Brazoria; 18708; new

Kawnee Company Inc., Denison; aluminum extrusion paint facility; Denison, Grayson County; 18709; new

Allan Products, Inc., Garland; wood products manufacturing; Garland, Dallas County; 18710; new

Cabot Gas Supply Corporation, Wickett; gas compressor facility; Wickett, Ward County; 18711; new

Tenneco Oil, Chesterville; gas compressors; Chesterville; 18712; new

Issued in Austin, Texas, on March 29, 1988.

TRD-8803281 Bill Ehret
Director of Hearing
Texas Air Control Board

Filed: March 31, 1988

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



Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On March 28, 1988, the banking commissioner received an application to acquire control of Citizens State Bank, Princeton, by Dr. Steven Pedro, Fort Worth, and Richard Smith, Aledo.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on March 28, 1988.

TRD-8803254 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: March 30, 1988

For further information, please call (512) 479-1200.



Texas Education Agency Consultant Contract Award

Description. This notice is filed pursuant to Texas civil Statutes, Article 6252-11c (Supplemental 1980-1981). After publication of a contractor proposal request in the November 13, 1987, issue of the *Texas Register* (12 TexReg 4277), the Texas Education Agency on March 31, 1988, executed a contract with Jim M. Henderson, 2911 Rush Creek Drive, Arlington, Texas 76017, to develop curriculum to support instruction in the essential elements of art, prekindergarten-Grade 12.

Cost and Dates. The total amount of the contract is \$51,500. The beginning date of the contract is January 28, 1988, and the ending date is June 15, 1988.

Due Dates of Documents. Written curriculum materials are due from the contractor on or before June 15, 1988.

Issued in Austin, Texas, on June 15, 1988.

TRD-8803405 W. N. Kirby
Commissioner of Education

Filed: April 4, 1988

For further information, please call (512) 463-9212.



Contract Award

This contract award filed in accordance with Texas Civil Statutes, Article 6252-11c.

After publication of a consultant proposal request in the May 22, 1987, issue of the *Texas Register* (12 TexReg 1673), the Texas Education Agency has contracted with Coopers and Lybrand, 1800 One American Center, Austin, Texas 78701, to conduct a study on : cost study of effective programs for educationally disadvantaged and gifted and talented students. The contract amount awarded is \$281,853. The contract beginning date is October 1, 1987, and the contract ending date is September 15, 1988, unless extended or terminated as otherwise provided in the contract. The finished final report is due on September 15, 1988.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803270 W. N. Kirby
Commissioner of Education

Filed: March 30, 1988

For further information, please call (512) 463-9212.



Request for Proposals

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Education Agency invites proposals for assistance to the Texas Education Agency and the Select Committee on Public Education by experts in the field of public school finance, school performance, and equity.

The contractor will be expected to develop the following products and provide the following services: development and analysis of alternatives for funding Texas districts; development of criteria used to evaluate the alternatives for funding Texas school districts; consultation on a variety of independent studies to be undertaken to support requests from the Texas Education Agency and/or the Select Committee on Public Education; preparation of a series of oral and written responses to questions posed by the Texas Education Agency and/or the Select Committee on Public Education; preparation of a review of a variety

of independent research in the areas of public school finance and school performance (especially in the area of linkages between the two); development of specific recommendations concerning funding of Texas school districts and performance; preparation of comparisons of existing Texas studies/approaches concerning funding of Texas school districts and school performance to those of other states.

The contractor must meet the following qualifications: national experience, including demonstrated work with other states concerning financial/equity issues; no current or past participation in the Edgwood v. Kirby litigation; indication of consultant's ability to perform tasks/services similar to those described in the previous section; accessibility and availability for intense activity, including attendance at several meetings per month and for prompt submittal of products or oral presentations during the period of May-August 1988.

Fees will not exceed \$40,000 based on daily rates plus travel and subsistence costs. Any incidental costs such as computer time, printing, typing, etc., shall be absorbed as part of the \$40,000 fee.

To obtain a complete copy of the request for proposal, contact the Document Control Center, Room 6-108, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9304. Proposals may be delivered by mail or in person to the Document Control Center at the Texas Education Agency. To be considered for funding, proposals must be received no later than 5 p.m. on Friday, May 5, 1988.

Issued in Austin, Texas, on March 31, 1988.

TRD-8803315 W. N. Kirby
Commissioner of Education

Filed: March 31, 1988

For further information, please call (512) 463-9212.



The Texas Education Agency requests proposals for the braille of certain textbooks for students and teachers in Texas public of certain textbooks for students and teachers in Texas public schools who are blind and visually handicapped. The textbooks to be brailled, as may be determined by the agency, consist of up to 20 titles for student editions and 18 titles for teacher editions. Subjects to be brailled include choral music, physical science, elementary statistics, and business mathematics. The finished product to be provided under the conditions of the contract shall have undergone the processes of transcribing, pressing, and binding and presented as a master copy in Braille, as called for in the *Code of Braille Textbook Formats and Techniques, 1977*. All textbooks to be brailled shall be completed by the contractor(s) in time for use by blind and visually handicapped students and teachers in Texas public schools at the start of the 1988-1989 school year.

Any private company, individual, or nonprofit organization may submit a proposal to the Texas Education Agency.

Election Criteria. The contract for the project will be awarded based on the cost per braille page, the quality of the brailled textbooks, evidence of experience in working with similar projects, adequacy of resources, budget and cost effectiveness, and evaluation design.

Further Information. A copy of the complete request for proposals may be obtained by writing or calling Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue,

Austin, Texas 78701, (512) 463-9304.

Deadline for Receipt of Proposals. The deadline for submitting a proposal is 5 p.m., April 29, 1988.

Issued in Austin, Texas, on April 29, 1988.

TRD-8803406 W. N. Kirby
 Commissioner of Education

Filed: April 4, 1988

For further information, please call (512) 463-9212.

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Texas Department of Health

Intent to Revoke Certificates of Registration

The Bureau of Radiation Control, Texas Department of Health, filed a complaint against the following registrants, pursuant to *Texas Regulations for Control of Radiation* (TRCR) 13.8. The agency intends to revoke the certificates of registration, order the registrants to cease and desist use of radiation machine(s), and order the registrants to divest themselves of such equipment, presenting evidence satisfactory to the Bureau of Radiation Control that they have complied with the order and the provisions of Texas Civil Statutes, Article 4590f. If the items in the complaints are corrected within 30 days of the date of the complaints, no orders will be issued. The compliance are as shown following this notice.

This notice affords the opportunity for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of service of the complaint to be valid. Such written request must be filed with David K. Lacker, Chief, Bureau of Radiation Control, (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the items in the complaints are not corrected, the certificates of registration will be revoked at the end of the 30-day period of notice.

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.-5 p.m. (except holidays).

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Medicenter, 8702-B Spring Valley Road, Dallas, Texas 75243 (the registrant), holder of Certificate of Registration Number 5-14635.

Texas Regulations for Control of Radiation(TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of expiration month of the certificate of registration. On April 1, 1987, the registrant was billed \$76 for the fee due on Certificate of Registration Number 5-14635, covering the period from September 1986, to August 1987. On June 8, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

On August 14, 1987, the registrant was billed \$76 for the fee due on Certificate of Registration Number 5-14635, covering the period from September 1987, to August 1988.

Payment of the fee has not been received.

TRCR 21.401(f) requires that the registrant shall transfer all personnel monitoring records to the agency prior to termination of a certificate of registration. On August 26, 1987, the agency received a request for termination of registration, indicating that the registered machine was in storage, have been moved from the registered address. Personnel monitoring records were not included with the request.

Therefore, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13, Texas Civil Statutes, Article 4590f, either disable the machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Trinity Valley Clinic, 970 Highway 85 West, Gun Barrel City, Texas 75147 (the registrant), holder of Certificate of Registration Number 7-15014.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On February 15, 1987, the registrant was billed \$76 for the fee due on Certificate of Registration Number 7-15014, covering the period from February 1987, to January 1988. On October 22, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

TRCR 42.8 requires that the registrant shall notify the agency, in writing, within 30 days of any change which would render the information contained in the certificate of registration no longer accurate. On October 28, 1987, the agency received notification that the facility was no longer in business. The notification of change in information. On November 19, 1987, the agency notified the registrant that additional information was required on disposition of the x-ray equipment in addition to submission of all personnel monitoring records accumulated during the tenure of the registration. On December 23, 1987, the agency again notified the registrant, by certified mail, of the necessity to report disposition of equipment and to provide personnel monitoring reports. Receipt of the certified mail was acknowledged on January 11, 1988. Notification of change in information in detail sufficient to enable the agency to act appropriately has not been received.

Therefore, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13, Texas Civil Statutes, Article 4590f, either disable the

machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Hamilton Standard Digital System, Inc., P.O. Box 115031, Carrollton, Texas 75011-5031 (the registrant), holder of Certificate of Registration Number 5-14864.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each Certificate of Registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On February 15, 1987, the registrant was billed \$71 for the fee due on Certificate of Registration Number 5-14864, covering the period from February 1987, to January, 1988. On October 21, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

Therefore, the agency as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and order the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13, Texas Civil Statutes, Article 4590f, either disable the machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If the fee is paid within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Addison Airport Chiropractic Center, 4821 Keller Spring, Dallas, Texas 75248 (the registrant), holder of Certificate of Registration Number 5-14908.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On February 15, 1987, the registrant was billed \$63 for the fee due on Certificate of Registration Number 5-14908, covering the period from February 1987, to January, 1988. On October 21, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

TRCR 42.8 requires that the registrant shall notify the agency, in writing, within 30 days of any change which would render the information contained in the certificate of registrations no longer accurate. On October 22, 1987, an inspection of the registrant's program by an agency representative revealed that the radiation machine had been removed from the registered address. A request for

termination of certificate of registration was provided by the agency's representative to the registrant for his use in reporting the change in information. Notification of change of information has not been received.

Therefore, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant and requiring that the registrant present evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division, and makes the following complaint against Bolivar Medical Clinic, Highway 87, Crystal Beach, Texas 77650 (the registrant), holder of Certificate of Registration Number 11-14515.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On September 15, 1987, the registrant was billed \$76 for the fee due on Certificate of Registration Number 11-14515, covering the period from October 1987, to September, 1988. Payment of the fee has not been received.

TRCR 42.8 requires that the registrant shall notify the agency, in writing, within 30 days of any change which would render the information contained in the certificate of registration no longer valid. On October 23, 1987, the agency received returned certified mail indicating that the registrant had changed address. On November 5, 1987, the agency notified the registrant of the requirement and provided application for certificate of registration for the registrant's use in meeting the requirement. Notification of change in information has not been received.

Therefore, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13, Texas Civil Statutes, Article 4590f, either disable the machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Joe R. Taylor, M.D., 13855 South Post Oak, Houston, Texas 77045 (the registrant), holder of Certificate of Registration Number 11-14580.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule

12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On September 15, 1986, the registrant was billed \$76 for the fee due on Certificate of Registration Number 11-14580, covering the period from October 1986, to September, 1987. On July 21, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

On September 15, 1987, the registrant was billed \$76 for the fee due on Certificate of Registration Number 11-14580, covering the period from October 1987, to September, 1988. Payment of the fee has not been received.

TRCR 42.8 requires that the registrant shall notify the agency, in writing, within 30 days of any change which would render the information contained in the certificate of registration no longer accurate. On July 15, 1987, the agency received returned certified mail indicating that the registrant had changed address. On July 21, 1987, the agency notified the registrant by certified mail that the failure to notify the agency of change in information was a violation of TRCR 42.8, and required that the registrant respond within 10 days of receipt of the correspondence. Application for certificate of registration was enclosed with the notice for the registrant's use in meeting the requirement. Receipt of the certified mail was acknowledged on July 23, 1987. Notification of change of address has not been received.

Therefore, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13, Texas Civil Statutes, Article 4590f either disable the machine(s) or divest himself of it, presenting evidence satisfactory to the Bureau of Radiation Control that he has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Laughlin Clinic Associates, 700 South McCarty Avenue, Eagle Lake, Texas 77434 (the registrant), holder of Certificate of Registration Number 11-03584.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On September 15, 1986, the registrant was billed \$76 for the fee due on Certificate of Registration Number 11-03584, covering the period from October 1986, to September 1987. On June 18, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

On September 15, 1987, the registrant was billed \$76 for the fee due on Certificate of Registration Number 11-03584, covering the period from October 1987, to September 1988. Payment of the fee has not been received.

TRCR 42.9(a) requires that the registrant shall file applica-

tion for renewal of certificate of registration in accordance with TRCR 42.3. On August 14, 1987, the agency notified the registrant that the certificate was due to expire on October 31, 1987, and of the registrant's responsibility to apply for renewal. Application for certificate of registration was enclosed with the notice for the registrant's use in fulfilling the requirement. On October 31, 1987, Certificate of Registration Number 11-03584 expired. Application for renewal of certificate of registration has not been received.

Therefore, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13 Texas Civil Statutes, Article 4590f, either disable the machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Eberhard Clarke Dental Group, 6655 Travis, Suite 560, Houston, Texas 77030 (the registrant), holder of Certificate of Registration Number 11-14550.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On September 15, 1986, the registrant was billed \$82 for the fee due on Certificate of Registration Number 11-14550, covering the period from October 1986, to September 1987. On June 18, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

On September 15, 1987, the registrant was billed \$82 for the fee due on Certificate of Registration Number 11-14550, covering the period from October 1987, to September 1988. Payment of the fee has not been received.

TRCR 42.8 requires that the registrant shall notify the agency, in writing, within 30 days of any change which would render the information contained in the application for registration no longer accurate. On June 30, 1986, the agency received a report of assembly of a diagnostic x-ray system indicating the installation of an additional radiation machine, Belmont Panoramic unit, Model 098E-1530331, Serial Number 1530331. Notification of change in inventory of radiation machines has not been received.

Therefore, the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13, Texas Civil Statutes, Article 44590f, either disable the machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Complaint. Comes now the Division of Compliance and Inspection, Bureau of Radiation Control, Texas Department of Health (the agency), through its division director, and makes the following complaint against Southwest Imaging Center, Inc., 1501 Arizona, Building 9, El Paso, Texas 79902 (the registrant), holder of Certificate of Registration Number 3-12679.

Texas Regulations for Control of Radiation (TRCR) 12.11(b) requires payment of an annual fee for each certificate of registration for radiation machines, in the amount indicated for the appropriate category in Schedule 12.31 of TRCR. The fee shall be received each year on or before the last day of the expiration month of the certificate of registration. On August 15, 1986, the registrant was billed \$125 for the fee due on Certificate of Registration Number 3-12679, covering the period from September 1986, to August 1987. On June 8, 1987, the agency informed the registrant of the delinquency of payment, giving the registrant opportunity to show compliance with all requirements of the law for retention of the certificate of registration. Payment of the fee has not been received.

TRCR 21.401(f) requires that all personnel monitoring records shall be transferred to the agency prior to termination of a certificate of registration. On September 15, 1987, the registrant submitted a request for termination of Registration Number 3-12679. Personnel monitoring records accumulated during the tenure of the registration have not been received.

Therefore the agency, as provided in *Texas Regulations for Control of Radiation* 13.8(b), requests that an order be issued revoking the certificate of registration of the registrant and ordering the registrant to cease and desist use of such machine(s), and further that the registrant, in order to be in compliance with the Texas Radiation Control Act, §13, Texas Civil Statutes, Article 4590f, either disable the machine(s) or divest itself of it, presenting evidence satisfactory to the Bureau of Radiation Control that it has complied with this order and the provisions of Texas Civil Statutes, Article 4590f.

If these items are corrected within 30 days of the date of this complaint, no order will be issued.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803335 Robert A. MacLean
Deputy Commissioner
Texas Department of Health

Filed: April 1, 1988

For further information, please call (512) 835-7000.

Texas Higher Education Coordinating Board

Notice of Meetings

The Evaluation Committee will meet on Wednesday, April 13, 1988, from 10 a.m. -4 p.m. The meeting will be held in the Coordinating Board's Conference Room 209, 200 East Riverside Drive, Austin. For additional information, contact the Texas Academic Skills Program (TASP) office at the Coordinating Board in Austin at (512) 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803362 James McWhorter
Assistant Commissioner for Planning and Administration
Texas Higher Education Coordinating Board

Filed: April 1, 1988

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

The SBOE Joint Liaison Committee of the Texas Higher Education Coordinating Board will meet on Thursday, April 7, 1988, at 3 p.m. The meeting will be held in the Coordinating Board Room 255, 200 East Riverside Drive, Austin. For additional information, contact Glenda Barron at 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803368 James McWhorter
Assistant Commissioner for Planning and Administration
Texas Higher Education Coordinating Board

Filed: April 1, 1988

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

The Teacher Education Advisory Committee of the Texas Higher Education Coordinating Board will meet on Wednesday, April 20, 1988, at 1:30 p.m. The meeting will be held in Conference Room 209, 200 East Riverside Drive, Austin. For further information, please contact Glenda Barron at 462-6485.

The Commissioner's Advisory Committee on Teacher Induction will meet on Monday, April 11, 1988, at 1:30 p.m. The meeting will be held in the Coordinating Board's Room 255. For additional information, contact Glenda Barron at 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803366 James McWhorter
Assistant Commissioner for Planning and Administration
Texas Higher Education Coordinating Board

Filed: April 1, 1988

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

The Academic Skills Development Committee will meet on Thursday, April 7, 1988, from 10 a.m.-4 p.m. The meeting will be held in the Coordinating Board's Conference Room 209, 200 East Riverside Drive, Austin. For additional information, contact the Texas Academic Skills Program (TASP) office at the Coordinating Board in Austin at (512) 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803365 James McWhorter
Assistant Commissioner for Planning and Administration
Texas Higher Education Coordinating Board

Filed: April 1, 1988

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

The Texas Academic Skills Council will meet on Friday, April 8, 1988, from 10 a.m.-4 p.m. The meeting will be held in the Coordinating Boards' Room 255 contact the Texas Academic Skills Program (TASP) office at the Coordinating Board in Austin at (512) 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803364 James McWhorter
Assistant Commissioner for Planning and Administration

Filed: April 1, 1988

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



The Faculty Development Committee will meet on Monday, April 11, 1988, from 10 a.m.-4 p.m. The meeting will be held in Coordinating Board's Conference Room 209, 200 East Riverside Drive, Austin. For additional information, contact the Texas Academic Skills Program (TASP) office at the Coordinating Board in Austin at (512) 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803364 James McWhorter
Assistant Commissioner for Planning and
Administration
Texas Higher Education Coordinating Board

Filed: April 1, 1988

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



The Faculty Development Committee will meet on Monday, April 11, 1988, from 10 a.m.-4 p.m. The meeting will be held in Coordinating Board's Conference Room 209, 200 East Riverside Drive, Austin. For additional information, contact the Texas Academic Skills Program (TASP) office at the Coordinating Board in Austin at (512) 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803363 James McWhorter
Assistant Commissioner for Planning and
Administration
Texas Higher Education Coordinating Board

Filed: April 1, 1988

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



The Tests and Measurements Committee will meet on Friday, April 15, 1988, 10 a.m.-4 p.m. The meeting will be held in the Coordinating Board's Conference Room 209, 200 East Riverside Drive, Austin. For additional information contact the Texas Academic Skills Program (TASP) office at the Coordinating Board in Austin at (512) 462-6485.

Issued in Austin, Texas, on March 30, 1988.

TRD-8803361 James McWhorter
Assistant Commissioner for Planning and
Administration
Texas Higher Education Coordinating Board

Filed: April 1, 1988

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



State Department of Highways and Public Transportation

Public Hearing Notice

Pursuant to the Texas Coastal Waterway Act of 1975, Texas Civil Statutes, Article 5415e-2, §6(g), the State Highway and Public Transportation Commission will conduct a public hearing to receive data, evidence, comments, views, and/or testimony concerning the acquisition by donation, lease, or purchase of land environmentally suit-

able for use as disposal sites for materials dredged from the main channel of waterway. The location of the proposed sites for consideration by the commission is in Matagorda County and concerns five sites adjacent to the Intracoastal Waterway, and may be more specifically described as follows: approximately 200 acres, referred to as DA101A, is adjacent to and on the north side of the Gulf Intracoastal Waterway and west of Caney Creek. The site is also identified by the United States Army Corps of Engineers as between their station numbers 343+000 and 347+000; approximately 256 acres, referred to as DA102D, is adjacent to and on the north side of the Gulf Intracoastal Waterway and east of Boggy Bayou. The site is also identified by the United States Army Corps of Engineers as between their station numbers 356+000 and 361+000; approximately 260 acres, referred to as DA102E, is adjacent to and on the north side of the Gulf Intracoastal Waterway and west of Boggy Bayou. The site is also identified by the United States Army Corps of Engineers as between their station numbers 364+600 and 370+000; approximately 60 acres, referred to as DA104A Extension, is adjacent to and on the north side of the Gulf Intracoastal Waterway and west of Live Oak Bayou. The site is also identified by the United States Army Corps of Engineers as between their station numbers 383+000 and 386+900; approximately 50 acres, referred to as DA105A, is adjacent to and on the north side of the Gulf Intracoastal Waterway and west of Big Boggy Bayou. The site is also identified by the United States Army of Engineers as between their station numbers 403+000 and 405+500.

The public hearing will be held at 10:15 a.m., Wednesday, April 27, 1988, First Floor Meeting Room, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin.

Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of commenters or witnesses will be reserved exclusively to the commission as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the commission reserves the right to restrict testimony in terms of time or repetitive content.

For further information, please contact Alvin R. Luedecke, Jr., State Transportation Planning Engineer, P.O. Box 5051, Austin, Texas 78763-5051, (512) 465-7346; or Marcus L. Yancey, deputy director, planning policy, (512) 463-8627.

Issued in Austin, Texas, on March 31, 1988.

TRD-8803356 Diane L. Northam
Administrative Technician
State Department of Highways and Public
Transportation

Filed: April 1, 1988

For further information, please call (512) 463-8630.



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 a name change by Presbyterian Ministers' Fund Life Insurance and Annuity Company, a foreign life insurance company. The home office is in Philadelphia, Pennsylvania. The proposed new name is Interfaith Life Insurance Company.
2. Application for incorporation of the Hopkins County Life Insurance Compa-

ny, a domestic life insurance company. The home office is to be in Austin. 3. Application for admission to do business in Texas of C. E. Health Compensation and Liability Insurance Company, a foreign casualty company. The home office is in Wilmington, Delaware.

Issued in Austin, Texas, on March 29, 1988.

TRD-8803255 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: March 30, 1988

For further information, please call (512) 463-6327.

◆ ◆ ◆
Texas State Board of Pharmacy
Correction of Error

The Texas State Board of Pharmacy submitted proposed rules which contained errors as published by the office of the Texas Register in the March 25, 1988, issue of the *Texas Register* (13 TexReg 1420).

In §291.32, subparagraph (b)(1)(B) should read: "(B) All pharmacists shall assist the pharmacist-in-charge in meeting his or her responsibilities in ordering, dispensing, and accounting for prescription drugs."

Subparagraph (c)(2)(G) should read: "(G) bulk compounding, provided a pharmacist supervises and conducts in-process and final checks and affixes his or her initials to the appropriate quality control records."

In §291.33, clause (c)(1)(A)(i) should read: "(i) To assure the proper utilization of the drug for each new prescription drug order dispensed, a pharmacist shall explain to the patient or his and/or her agent;"

The first sentence of clause (c)(1)(A)(ii) should read: "(ii) So that a patient will have access to information concerning his or her prescription, a prescription may not be delivered to a patient unless a pharmacist is in the pharmacy."

In §291.34 subparagraph (b)(6)(B) should read: "(B) If there are no refill instructions on the original prescription drug order (which shall be interpreted as no refills authorized) or if all refills authorized on the original prescription drug order has been dispensed, authorization from the prescribing practitioner shall be obtained prior to dispensing any refills."

Subparagraph (d)(2)(H) should read: "(H) Failure to provide the records set out in this subsection, either on site or within 48 hours for whatever reason, constitutes prima facie evidence of failure to keep and maintain records."

Clause (d)(2)(I)(ii) should read: "(ii) the current refill history for Schedule III, IV, and V controlled substances for the immediately preceding six month period."

Paragraph (d)(4) inadvertently appeared as subparagraph (d)(3)(D).

In the preamble to §291.36, the second sentence to the second paragraph should read: "The cost of compliance with the section for small business will be reduced since current rules requires certification two times a year of the laminar flow hood at a cost of approximately \$50 per hood."

In the preamble to §§291.71, 291.73-291.75 the first sentence should read: "The Texas State Board of Pharmacy proposes amendments to §291.71 and §§291.73-291.75, concerning Class C (institutional) pharmacies."

In §291.74 clause (b)(2)(C)(ii) should read: "(ii) have

cleanable surfaces, walls, and floors;"

Clause (d)(2)(A)(ii) inadvertently appeared as (d)(2)(A)(i)

In the preamble to §291.76 the first sentence to the second paragraph should read: "Fred S. Brinkley, Jr., R.Ph., executive director/secretary 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 government as a result of enforcing or administering the section."

◆ ◆ ◆
Railroad Commission of Texas
Correction of Error

The Railroad Commission of Texas submitted an adopted new section which contained an error as published by the office of the Texas Register in the March 15, 1988, issue of the *Texas Register* (13 TexReg 1253).

In §3.48 the second sentence to subsection (c) should read: "If the Director of the Oil and Gas Division or the Director's delegate declines to approve the initial application, or if a protest is received to the Oil and Gas Division within the prescribed notice period, the operator may request a hearing to show that the capacity oil allowable is necessary either to prevent waste or to protect correlative rights."

◆ ◆ ◆
Texas Real Estate Commission
Consultant Contract Award

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Real Estate Commission announces that it has entered into a consultant contract with Touche Ross and Company, Suite 700, 909 Congress Avenue, Austin, Texas 78701-2421, to perform a management audit of the Texas Real Estate Commission as required by the 70th Legislature. The consultant proposal request was published in the January 26, 1988, issue of the *Texas Register* (13 TexReg 514). The value of the contract awarded is \$45,000. The contract was effective March 7, 1988, and will end no later than August 31, 1988.

Issued in Austin, Texas, on March 31, 1988.

TRD-8803337 Mark A. Moseley
Legal Counsel
Texas Real Estate Commission

Filed: April 1, 1988

For further information, please call (512) 465-3960.

◆ ◆ ◆
Rio Grande Compact Commission
Agenda for April 7, 1988, Meeting

The interstate (Texas, New Mexico, and Colorado) Rio Grande Compact Commission will hold its annual meeting at the hotel Alex Johnson in Rapid City, South Dakota, April 7, 1988, 9 a.m.

The 1988 annual meeting will be called to order; the meeting agenda will be approved; the minutes of the 1987 annual meeting will be approved; the reports of the chairman, the secretary, the Bureau of Reclamation, the Corps of Engineers and the United States Geological Survey will be presented; the reports of the Engineers and the United States Geological Survey will be presented; the reports of the Engineering, Legal, and Budget Committees will be presented; the reports to the governors will be considered;

a budget for fiscal year 1989 will be considered; unfinished business will be considered; new business will be introduced, including the place and date for the 1989 annual meeting; comments of the public will be invited; and the meeting will be adjourned.

Issued in Austin, Texas, on March 29, 1988.

TRD-8803292 Jesse B. Gillmer
 Rio Grande Compact Commissioner
 Texas Certifying Official

Filed: March 31, 1988

For further information, please call (915) 581-1161.

◆ ◆ ◆

Texas Turnpike Authority Consultant Contract Award

Description. This notice is filed pursuant to Texas Civil Statutes, Article 6252-11c. Following publication of a request for a statement of qualifications in the November 13, 1987, issue of the *Texas Register* (12 TexReg 4283), the Texas Turnpike Authority executed a contract on March 10, 1988, for a study of the feasibility of high-speed rail passenger service between the cities of Houston, Dallas, Fort Worth, Austin, and San Antonio. The prime contractor is Lichliter/Jameson and Associates, 1420 West Mockingbird Lane, Suite 300, Dallas, Texas 75247. Subcontractors are Wilbur Smith Associates, Inc., Houston; Morrison-Knudsen Engineers, Inc., San Francisco, California; Sylva Engineering Corporation, Houston; M. Ray Perryman Consultants, Inc., Waco; Underwood, Neuhaus and Company Inc., Houston; Andrews and Kurth, Houston; and Winstead McGuire Secrest and Minick, Austin.

Under the contract, there are seven major tasks: data collection and analysis; conceptual design; environmental assessment; financial analysis/economic impact institutional and legislative needs analysis and recommendations; review of the German consortium feasibility study; and preparation of interim and final reports.

Contract Value and Completion Date. Contract amount is a lump sum of \$700,000. An executive summary of the final report with legislative recommendations is due by December 15, 1988, with the completion of the final report due by February 15, 1989.

Issued in Austin, Texas, on March 24, 1988.

TRD-8803403 Robert G. Neely
 Executive Director
 Texas Turnpike Authority

Filed: April 4, 1988

For further information, please call (214) 522-6200.

◆ ◆ ◆



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GERARD L. CAFESJIAN
Vice President
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Dear Texas Register Subscriber,

We at West Publishing are very pleased to announce that we have signed an agreement with the state of Texas to publish the Official Texas Administrative Code (TAC). Texas Secretary of State Jack Rains, in his February news release, said, "I am pleased to see a company with West's credentials and experience undertaking this job. Texans deserve to have access to the state's constantly changing rules and regulations. They cannot afford to wait more than a year for updates."

With West as the official publisher of the TAC, you will not have to wait more than a year for updates; we plan on supplementing the TAC as often as necessary to keep you current. In addition to regular updates, the West Official TAC will continue to be supplemented twice each week by the Texas Register.

As this letter is being written, the following TAC titles are being scheduled for publication:

- | | |
|----------|------------------------------------|
| Title 1 | Administration |
| Title 7 | Banking and Securities |
| Title 16 | Economic Regulation |
| Title 19 | Education |
| Title 25 | Health Services |
| Title 28 | Insurance |
| Title 31 | Natural Resources and Conservation |

We will be publishing the TAC in softbound pamphlet form, which is much easier to use and maintain than a looseleaf service. If you've ever subscribed to a looseleaf service, you know how easily material can be misfiled or important information can be discarded. And you know how expensive it can be! West also plans to immediately add a workable index.

We will be notifying you in the very near future as to the exact publication dates and prices of the TAC. We look forward to fulfilling your needs for accurate, easy-to-use and timely Texas Administrative Code Titles and updates. Please feel free to contact Myrna Currier at 1-800-328-9352 with any comments or questions that you might have.

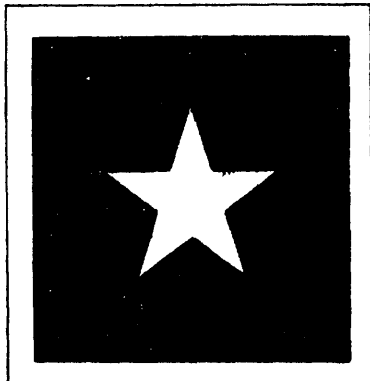
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