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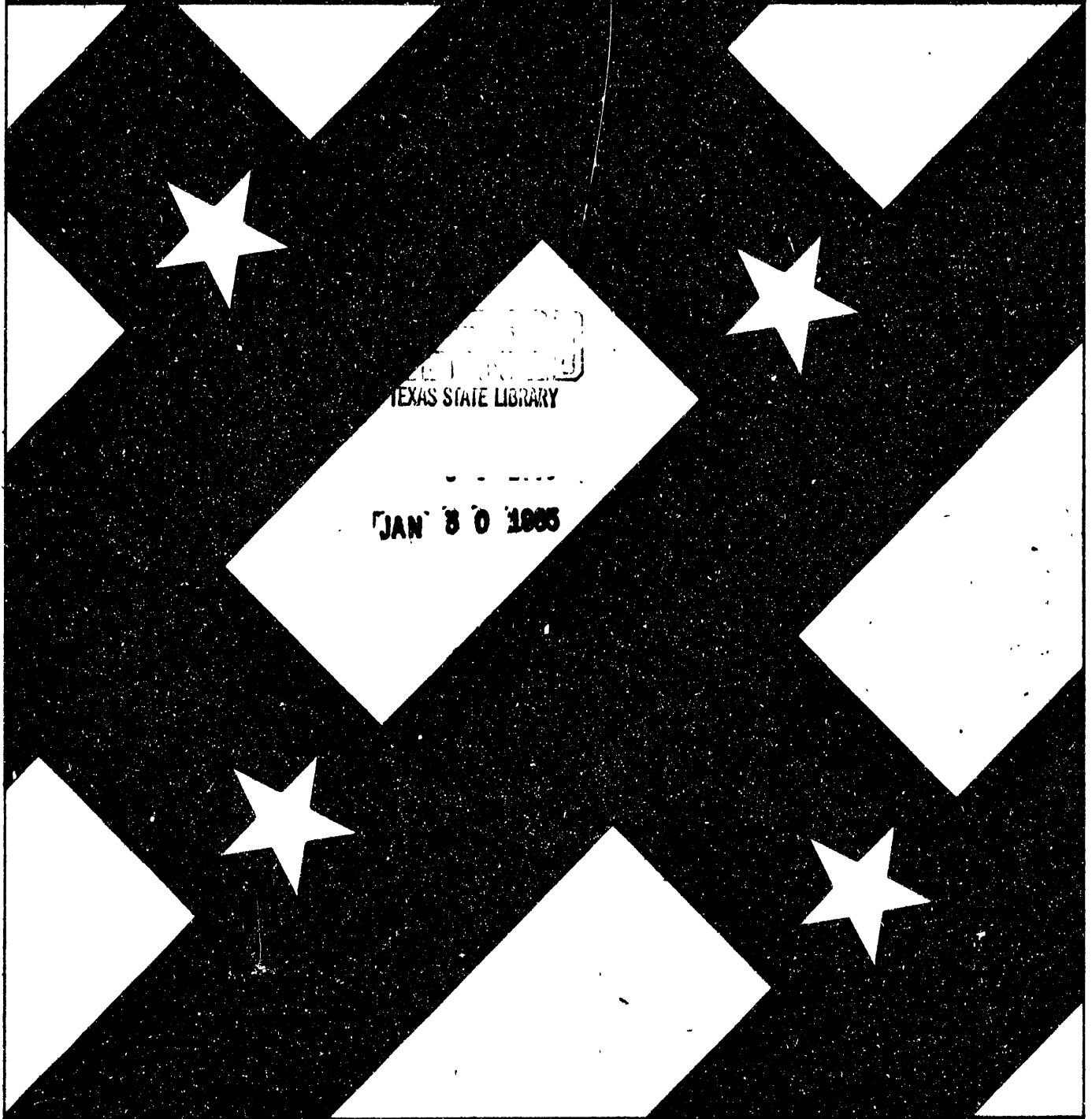
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Texas Register

Volume 10, Number 7, January 22, 1985

Pages 231 - 264



Highlights

The **Texas Education Agency** adopts on an emergency basis an amendment in a chapter concerning teacher certification
Effective date January 14 **page 234**

The **Texas Department of Community Affairs** proposes amendments in a chapter concerning

the **Texas Community Development Program**
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The **Comptroller of Public Accounts** proposes amendments concerning franchise tax reports and payments Earliest possible date of adoption - February 22 **page 238**

**Office of
the Secretary
of State**

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1985 with the exception of June 25, July 9, August 30, December 3, and December 31, by the Office of the Secretary of State

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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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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 monthly, quarterly, and annual indexes to aid in researching material published.

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written "10 TexReg 2" (issue date) while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date" 10 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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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 may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Opinions

JM-264 (RQ-334). Request from Houston Munson, 25th Judicial District attorney, Gonzales, concerning whether a county tax assessor-collector may retain fees for clericals and work performed in aiding an attorney hired by the county to collect delinquent taxes, and related questions.

Summary of Opinion. Because the Guadalupe County tax assessor-collector is required by statute to prepare a list of delinquent taxpayers and to provide the public with information of all the motor vehicles registered in the county, he has no authority to collect fees therefore either in public or private capacity.

JM-265 (RQ-281). Request from James Warren Smith, Jr., Frio County attorney, Pearsall, concerning whether charging excessive fees for copies of public documents constitutes a criminal offense under the Open Records Act.

Summary of Opinion. The Open Records Act, Texas Civil Statutes, Article 6252-17a, §10(b), does not include as a criminal offense a violation of §9(a), which relates to the charges for photocopies of public records.

JM-266 (RQ-303). Request from John B. Holmes, Jr., Harris County district attorney, Houston, concerning whether a district attorney is subject to the Open Records Act.

Summary of Opinion. The office of the district attorney is a governmental body within the meaning of the Open Records Act.

JM-267 (RQ-438). Request from Wilhelmina Delco, chairman, Higher Education Committee, Texas House of Representatives, Austin, concerning whether foreign nationals may be constitutionally charged

a higher rate of tuition at a state university than other nonresidents.

Summary of Opinion. A state law which charges a higher rate of tuition at state institutions of higher education to foreign nationals than the rate charged other nonresidents of Texas would raise serious constitutional issues, such as the issue of equal protection under the Fourteenth Amendment to the United States Constitution and under the Texas Constitution and interference with the federal government's exclusive right to control foreign policy and the immigration and admission of aliens to the United States.

JM-268 (RQ-451). Request from Glenn H. Kothmann, chairman, Subcommittee on Energy, Texas Senate, Austin, concerning whether a weekly newspaper qualifies as an official legal publication under the Bond Procedures Act.

Summary of Opinion. A weekly newspaper with a general circulation in a county within the area covered by a municipal utility district and/or water district may qualify as the official legal publication for such district under the Bond Procedures Act of 1981 and the Water Code, §§50.053, 51.4321, 53.1791, and 54.5121, provided that the provisions of Texas Civil Statutes, Article 29a, are strictly complied with.

JM-269 (RQ-414). Request from Mike Driscoll, Harris County attorney, Houston, concerning whether the real and personal property of the Blue Bird Circle is exempt from ad valorem taxes.

Summary of Opinion. The Blue Bird Circle does not meet the statutory requirements to qualify as a charitable organization and, therefore, is not exempted from ad valorem taxation by the state Property Tax Code, §11.18.

JM-270 (RQ-389). Request from Charles D. Houston, 155th Judicial District attorney, Bellville, concerning whether a constable may sell computers to his county.

Summary of Opinion. Texas Civil Statutes, Article 988b, do not prohibit a constable from contracting with the government of the county in which his precinct is located.

JM-271 (RQ-311). Request from Patrick J. Ridley, Bell County attorney, Belton, concerning whether a sheriff must accept a bail bond to obtain the release of a person held on a warrant or *capias* issued in another county.

Summary of Opinion. Texas Civil Statutes, Article 2372p-3, §14(a), require a sheriff in the county of arrest to accept and approve a bail bond offered by a bail bondsman licensed in the county of arrest to obtain the release of the accused who is being held on an out-of-county *capias* or warrant.

JM-272 (RQ-426). Request from Robert O. Viterna, executive director, Commission on Jail Standards, Austin, concerning the authority of the Commission on Jail Standards to perform an occupancy inspection of jail facilities in a project built pursuant to Texas Civil Statutes, Article 2370c-3.

Summary of Opinion. If the State of Arkansas has enacted appropriate legislation and the counties and cities affected have contracted as mandated, the Commission on Jail Standards may perform an initial occupancy inspection of, may allow Bowie County to use, and may thereafter annually inspect the jail facilities housed in the justice center built pursuant to Article 2370c-3.

TRD-850430

★ ★ ★

Emergency

Rules

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

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

TITLE 19. EDUCATION Part II. Texas Education

Agency

Chapter 141. Teacher Certification

Subchapter S. Testing Program

Basic Skills Tests Required for Admission to Teacher Education Programs

★ 19 TAC §141.432

The Texas Education Agency adopts on an emergency basis an amendment to §141.432, concerning the eligibility to be tested for admission to teacher education programs.

Section 141.432(b) now states that an individual who fails any one test three times must apply to the commissioner of education to be retested. When this section was initially adopted, the preprofes-

sional skills test (PPST), published by the Educational Testing Service, was a new test introduced in 1982. At that time, there were not sufficient alternate forms of the tests available to allow more than two retakes. At this time, there are eight alternate forms available for the PPST, and others are being developed.

Based upon contact with the institutions and the students, there appears to be no harm in allowing unlimited retakes at four-month intervals.

This amendment is adopted on an emergency basis in January so any students who have failed three times to pass the tests will be able to register and take the tests in March 1985.

This amendment is adopted on an emergency basis under the Texas Education Code, §13.032(a), which authorizes the State Board of Education to make rules concerning the issuance of teacher certificates, and §13.032(e), which requires

the State Board of Education to require satisfactory performance on competency examinations of basic skills as a condition for admission to an approved teacher education program.

§141.432. Eligibility to be Tested.

(a) (No change.)

(b) A person who has failed a test may retake the test after four months. [An individual who fails any one test three times must apply to the commissioner of education for permission to be retested.]

Issued in Austin, Texas, on January 14, 1985.

TRD-850392

W. N. Kirby
Interim Commission of
Education

Effective date: January 14, 1985
Expiration date: May 15, 1985
For further information, please call
(512) 475-7077.

★ ★ ★

Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text**. Brackets indicate deletion of existing material within a rule.



TITLE 10. COMMUNITY DEVELOPMENT Part I. Texas Department of Community Affairs Chapter 9. Texas Community Development Program Subchapter A. Allocation of Program Funds

★ 10 TAC §9.1

The Texas Department of Community Affairs proposes amendments to §9.1, concerning citizen participation requirements under the Texas Community Development Program. The amendments change the prior notice requirements of the public hearings and shorten the length of time required to elapse between the hearings.

Douglas C. Brown, general counsel, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Brown also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule is greater opportunity for eligible units of local government to compete for funding under the Texas Community Development Program. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Douglas C. Brown, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 4413(201),

§4A, which provide the Texas Department of Community Affairs (TDCA) with the authority to allocate community development block grant nonentitlement area funds to eligible counties and municipalities in accordance with rules and regulations adopted by the TDCA.

§9.1 General Provisions.

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

(e) Citizen participation. An applicant for Texas Community Development Program funding must:

(1) hold at least one public hearing prior to preparing its application and at least one additional public hearing prior to submitting its completed application to the Texas Department of Community Affairs (TDCA). At least one of the public hearings must be held in the proposed project area. The first public hearing must be held at least seven (14) days prior to the second public hearing. The first public hearing must include a presentation describing the funding available, the types of eligible activities under the Texas Community Development Program, and the use of past Texas Community Development Program funds, if applicable. If an applicant changes the scope of its proposed project (e.g., the site, the amount of funds requested, or the number of beneficiaries) the applicant must hold an additional public hearing on the revised project prior to submitting its completed application to the TDCA; and

(2) publish notice of each hearing in the nonlegal section of a newspaper having general circulation in the municipality or county at least 72 hours (seven days) prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish at the discretion of the unit of general local government as appropriate. An applicant must retain documentation of the notices of the hearings, a list of the persons who attended the hearings, and minutes of the hearings for a period of one year after the date of the second public hearing, or until the project, if funded, is closed out.

(f)-(k) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal coun-

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

Issued in Austin, Texas, on January 11, 1985.

TRD-850391

Douglas C. Brown
General Counsel
Texas Department of
Community Affairs

Earliest possible date of adoption:

February 22, 1985

For further information, please call
(512) 443-4100, ext. 210.

★ ★ ★

TITLE 19. EDUCATION Part II. Texas Education Agency Chapter 125. Central Education Agency Fund Allocations, Contracts, and Agreements Subchapter E. State Board of Education Responsibility for Review and Approval of Fund Allocations

★ 19 TAC §125.83

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Education Agency, 201 East 11th Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas Education Agency (TEA) proposes the repeal of §125.83, concerning the semiannual report to the State Board of Education of all funds allocated to each school district and all other recipients, by funding source. The required report is voluminous and not very useful. The practice of a regular semiannual report containing all of this information has been discontinued. Therefore, §125.83 is proposed for repeal. Information on funds allocated is available on request should there be a need for it.

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

Dr. Beverly J. Bardsley, policy development director, and Mr. Bennett have determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is a reduction in unnecessary reporting to the State Board of Education. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 201 East 11th Street, Austin, Texas 78701, (512) 475-7077. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §11.26(a)(3), which authorizes the State Board of Education to establish procedures for budgetary control, expending, auditing, and reporting on expenditures within the budgets adopted.

§125.83. Report of Funds Allocated.

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 January 14, 1985.

TRD-850394 W. N. Kirby
Interim Commissioner of
Education

Proposed date of adoption:

March 9, 1985

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

★ ★ ★

Chapter 141. Teacher Certification

Subchapter S. Testing Program Basic Skills Tests Required for Admission to Teacher Education Programs

★19 TAC §141.432

(Editor's note: The Texas Education Agency proposes for permanent adoption the amendment it adopts on an emergency basis in this issue. The text of the amendment is

published in the *Emergency Rules section of this issue*.)

The Texas Education Agency (TEA) proposes an amendment to §141.432, concerning the eligibility to be tested for admission to teacher education programs.

Section 141.432(b) now states that an individual who fails any one test three times must apply to the commissioner of education to be retested. When this section was initially adopted, the preprofessional skills test (PPST) published by the Educational Testing Service was a new test introduced in 1982. At that time, there were not sufficient alternate forms of the tests available to allow more than two retakes. At this time, there are eight alternate forms available for the PPST, and others are being developed.

Based upon contact with the institutions and the students, there appears to be harm in allowing unlimited retakes at four-month intervals.

This amendment is adopted on an emergency basis simultaneously so that any students who have failed three times to pass the tests will be able to register and take the tests in March 1985.

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

Dr. Beverly J. Bardsley, policy development director, and Mr. Bennett have determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is that students will be able to retake the tests for admission to teacher education programs an unlimited number of times. The anticipated economic cost to individuals who are required to comply with the rule as proposed for each year from 1985-1989 is \$33 for the three tests of the PPST, \$23 to retake one test, and \$28 to retake two tests.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 201 East 11th Street, Austin, Texas 78701, (512) 475-7077. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §13.032(a), which authorizes the State Board of Edu-

cation to make rules concerning the issuance of teacher certificates, and §13.032(e), which requires the State Board of Education to require satisfactory performance on competency examinations of basic skills as a condition for admission to an approved teacher education program.

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 January 14, 1985.

TRD-850393 W. N. Kirby
Interim Commissioner of
Education

Proposed date of adoption:

March 9, 1985

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

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TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners Chapter 171. Instructional Permits

★22 TAC §171.1

The Texas State Board of Medical Examiners proposes amendments to §171.1, concerning institutional permits. The amendments set forth what constitutes a fellowship, internship, and residency. Additionally, the amendments allow for alternate documentation in instances where proof of exhaustive efforts on the applicant's part to secure the required documentation is presented.

Florence Allen, accountant, and Jean Davis, program administrator, have determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Ms. Davis also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is assurance that documentation received for physician licensure permits, whether the required or substitute documentation, is sufficient to satisfy the board of the applicants' qualifications. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. Although no date has been set, a public hearing is expected the latter part of February.

The amendments are proposed under the Medical Practice Act, Article 4495b, which provides 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.

§171.1. Interns, Residents, or Fellows Permit. Institutional permits may be granted to persons desiring to serve in this state as an intern, resident, or fellow in graduate medical programs in hospitals and medical institutions approved by the Accreditation Council for Graduate Medical Education or [American Medical Association and] the American Osteopathic Association for internship, residency, and fellowship programs. An **internship** is a clearly defined and delineated first postgraduate year program approved by the Texas State Board of Medical Examiners. A **residency** is a specialized, clearly defined, and delineated postgraduate program approved by the Texas State Board of Medical Examiners. A **fellowship** is a specialized, clearly defined, and delineated course of training as a postresidency program for additional training in a medical specialty or subspecialty delivered in a program approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association or in a program approved by the Texas State Board of Medical Examiners. Interns, residents, and fellows must have the degree of doctor of medicine or doctor of osteopathy issued by a school of medicine or osteopathy approved by the Texas State Board of Medical Examiners. The director of medical education of the institution must certify to the Texas State Board of Medical Examiners that internships, residencies, and fellowships at his or her institution meet the appropriate definition before an institutional permit may be issued. An applicant wishing approval of a program which does not meet the appropriate definition may apply for approval of the Texas State Board of Medical Examiners by submission of a written request addressed to the executive director stating reasons therefor. If the executive director recommends approval of the program, an institutional permit shall be issued. If the executive director does not recommend approval, the applicant may appeal to the full board for its consideration of the request. The board, in its sole discretion, may grant or deny the request. Institutional permits may be allowed under the following conditions:

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

(8) The board may, in unusual circumstances, allow substitute documents where proof of exhaustive efforts on the applicant's part to secure the required documents is presented. These exceptions are reviewed by the board's executive director on a case-by-case basis.

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 January 14, 1985.

TRD-850437 G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption:
February 22, 1985
For further information, please call
(512) 452-1078.

★ ★ ★

TITLE 28. INSURANCE

Part I. State Board of Insurance

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

Powers and Duties Examination and Corporate Custodian and Tax

★059.01.15.227

The State Board of Insurance proposes new Rule 059.01.15.227, concerning the proper values to be reported for Texas investments and similar investments of the comparison state under the Insurance Code, Article 4.11. This rule is interpretative of Article 4.11; it specifies the date of valuation of certain investments referred to in the statute. Since the rule simply clarifies what the statute already provides, no cost implications or fiscal implications are expected.

J. W. Arendall, Corporate Custodian and Tax Division director, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Arendall also has determined that for each year of the first five years the rule

as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is a clarification of statutory law and facilitation of the regulatory process respecting the payment of premium taxes. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to J. W. Arendall, Director of Corporate Custodian and Tax Division, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

The new rule is proposed under the Insurance Code, Article 4.11, §13(b), pursuant to which the State Board of Insurance may establish rules which are reasonable for the implementation of that statute.

.227. **Valuation Date for Investments under the Insurance Code, Article 4.11.** The value to be reported for each investment under the Insurance Code, Article 4.11, shall be the admitted value reflected in the insurer's annual statement as of December 31 of the tax year, except demand deposits of banks, savings and loans, or other financial institutions. Such demand deposits shall be reported at the average of the month-end balance for each of the 12 months of the tax year. The month-end balances of demand deposits shall be determined from the insurer's ledger accounts. This rule applies to premiums collected on and after January 1, 1985.

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 January 11, 1985.

TRD-850403 James W. Norman
Chief Clerk
State Board of
Insurance

Earliest possible date of adoption:
February 22, 1985
For further information, please call
(512) 475-2950.

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter Q. Franchise Tax

★ 34 TAC §3.391

The Comptroller of Public Accounts proposes amendments to §3.391, concerning franchise tax reports and payments. The definition of "books and records of account" has been amended to reflect the holding in *Southwestern Motor Transport, Inc. v. Bullock*, 614 S.W.2d (Texas Civil Appeals—Austin 1981, no writ). The scope of the comptroller's examination power has been amended to conform with the Texas Tax Code, §111.004, passed by the 67th Legislature, 1981. The interest rate on delinquent taxes changed from 7.0% to 10% effective January 1, 1982. The due date for the annual franchise tax report changed to March 15 in accordance with the Texas Tax Code, §171.152 and §171.202, passed by the 68th Legislature, 2nd Called Session, 1984. Corporations chartered, obtaining a certificate of authority or beginning to do business in Texas during the period from October 1—April 30 will compute and pay in advance an additional year's tax with their initial reports, in accordance with the Texas Tax Code, §171.152 and §171.153, passed by the 68th Legislature, 2nd Called Session, 1984.

Billy Hamilton, revenue estimating director, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. This section is promulgated under the Texas Tax Code, Title 2, and no statement of fiscal implications for small businesses is required.

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

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

The amendments are proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the

administration and enforcement of the franchise tax.

§3.391. Franchise Tax Reports and Payments.

(a) Reports and payments; penalties.

(1) Each domestic and foreign corporation subject to the franchise tax levied by the Texas Tax Code, §171.001, must [Article 12.01, shall] file an initial [a first year] franchise tax report, and[,] thereafter[,] an annual franchise tax report, and at the same time must [shall] pay the franchise tax and any applicable penalties and interest due by the corporation as shown by the [such] reports. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a corporation in receivership for which he has been appointed receiver. A debtor in possession[,] or the appointed trustee or receiver[,] of a corporation in reorganization or arrangement proceedings under the Bankruptcy Act[,] is responsible for filing franchise tax reports and paying the franchise tax prior to confirming and consummating [of] the plan of reorganization or arrangement.

(A) The initial franchise tax deposit of \$100, as required by the Texas Tax Code, §171.155 [Article 12.06] and §3.409 of this title (relating to Initial Franchise Tax Deposits by First-Year Corporations), is due prior to a corporation's receipt of its charter or certificate of authority under the Texas Business Corporation Act or Texas Professional Corporation Act.

(B) Both the initial [The first year] report and payment of the tax due, if any, over the \$100 prepayment credit, if any, are due no later than 90 days after the expiration of one year from the date of the charter of a Texas corporation, or from the date of the certificate of authority or beginning of business in Texas of a foreign corporation, whichever is applicable. The initial [first] franchise tax report and payment are for the period beginning on the date of the [such] charter, [or] certificate of authority or beginning of business in Texas and ending on April 30 following the first anniversary of the [such] charter, [or] certificate, or beginning of business in Texas. In addition, when the first anniversary occurs during the period from October 1 through [between January 1 and] April 30, [both dates inclusive,] there must [shall] also be computed and paid in advance with the initial [first year] report an additional year's tax for the franchise tax year beginning on May 1 following the first anniversary and ending on April 30 of the succeeding year. The report and tax (including the additional year's tax when applicable) must [shall] be based on and computed in accordance with the corporation's financial condition as of the end of the month nearest its first anniversary. This closing date may fall within the same calendar year as the normal annual closing date to be used for the corporation's first [initial] annual fran-

chise tax report. Each of these reports covers a different tax period; no overlapping of liability or double taxation occurs. The corporation must report its initial franchise tax liability on preprinted reports furnished by the comptroller. [This circumstance does not result in double taxation or overlapping liability as the two reports are for different period of time. Preprinted reports will be furnished by the comptroller on which the corporation must report its first year franchise tax liability.]

(C) The annual franchise tax report must [shall] be filed and the tax paid no later than March [June] 15 of each year. The annual tax is paid in advance for the franchise tax year beginning on May 1 of the year in which the report is due and ending on April 30 of the succeeding year. The report and payment must [shall] be based on and computed in accordance with the corporation's financial condition as of the last day of its accounting year ending in the preceding calendar year.

(2) (No change.)

(3) Penalty and interest will be assessed in the following manner:

(A) The Texas Tax Code, §171.362, [Article 12.14] imposes a 5.0% penalty on the amount of franchise tax due by a corporation which fails to report and pay the tax when due. If any part of the tax is not reported and paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of \$1.00. Delinquent taxes accrue interest beginning 60 days after the due date. Interest accrues at an annual rate of 6.0% through [until] December 31, 1979; [, and thereafter] at an annual rate of 7.0% from January 1, 1980, through December 31, 1981; and beginning January 1, 1982, at 10% per annum. [, said interest to begin accruing 60 days after the due date. If only a portion of the tax is timely paid, the foregoing penalties and interest are applied only to the balance of the tax which was not timely paid. Interest is not payable by the comptroller on overpayments or credits to which a taxpayer may be due.]

(B) When a corporation is issued an audit assessment or other underpayment notice based on a deficiency in a prior year, penalties and interest are [shall be] applied as of the date in the [such] prior year that the underpaid tax was due.

(C) If the comptroller determines [may determine] that a corporation exercised reasonable diligence to comply with the statutory filing or payment requirements, [as to timeliness, in which event] the comptroller [also] may waive [determine that] penalties or interest for the late filing of a report or for a late payment. [will not be due and payable. In requesting such a determination,] The corporation requesting waiver must [should] furnish a detailed description of the circumstances which

caused the late filing or late payment and the diligence exercised by the corporation in attempting to comply with the statutory requirements.

(b) Preparing the report; financial data; amended reports.

(1) All [The first year] franchise tax reports must [report and the annual report shall] be completed in accordance with this section [rule], [and] the instructions printed on the report, and any special instructions [which may be] issued [from time to time] by the comptroller. Except as otherwise prescribed, the report must be based on [shall reflect] and the tax must [shall] be computed on the corporation's financial condition as shown in its books and records of account. For example, if a corporation elects to treat intangible development costs as expenses for federal income tax purposes[,] but capitalizes such costs for book purposes, or vice versa, the franchise tax report must be filed in accordance with the books and records, not as shown by the federal income tax returns. [The "books and records of account" on which a corporation's financial condition is determined, means general and special journals and the ledger accounts. In conducting an audit, or other examination of a corporation's franchise tax account, the comptroller,] For the purpose of determining whether the books and records accurately reflect the corporation's financial condition, during the course of an audit or other examination of a corporation's franchise tax account, the comptroller may examine financial statements, working papers, registers, memorandums, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with its examination, the comptroller may also examine any of the corporation's officers or employees under oath.

(2) The books and records of account on which a corporation's financial condition is determined are the general and special journals and ledger accounts of original entry maintained on a routine basis by the corporation which are an accurate reflection of the corporation's financial condition.

(A) If a corporation maintains more than one set of books of original entry, only one of which is in accordance with generally accepted accounting principles (GAAP), the GAAP books must be used for franchise tax purposes to the extent that they comply with the franchise tax statutes or rules issued by the comptroller.

(B) Books and records maintained for federal income tax purposes are not acceptable for franchise tax purposes, unless they are the only books and records maintained on a day-to-day basis.

(C) If a corporation maintains two or more sets of books and records (i.e., two or more sets of books of original entry) in accordance with GAAP, it must

designate one set of books and records for franchise tax reporting purposes. Permission must be obtained from the Tax Administration Division, Tax Policy Section, to report in accordance with any other set of books after one set is designated. Financial statements are not considered a set of books of original entry.

(D) Year-end adjustments to books and records will not be recognized for franchise tax purposes if the adjustments are immediately reversed at the beginning of the next accounting year. Year-end adjustments which change the day-to-day accounting method to another method (other than for a one-time accounting change) will not be recognized. However, year-end adjustments may be recognized in situations where the general ledger is incomplete.

(3)(2) Except as may be permitted as a special reporting method under Franchise Tax Rule .003,] A consolidated or combined report, reflecting the financial data of a parent corporation and its subsidiaries[,] or the financial data of other separate corporations[,] as though they were a single economic entity, is not authorized [by statute or by rule of the comptroller].

(4)(3) A corporation may file an amended report for the purpose of correcting [the financial data on which a prior report was based, or for correcting] a mathematical error or other error in a [prior] report[,] or for the purpose of supporting a claim for refund. Applicable penalties and interest must be reported and paid on any additional amount of tax shown to be due on the amended report. In filing an amended report, the corporation must [shall] type or print on the report [thereon], immediately above the corporation [corporate] name, the phrase "amended report." The report should be forwarded with a cover letter of explanation, with [such] enclosures [as] necessary to support the amendment.

(c) Payments under protest. It is the responsibility of the corporation which pays tax under protest to comply with Article 1.05. For the corporation's convenience, the comptroller will advise it of the amount received that is paid by it under protest and the date of such payment. The amount protested will be placed in a suspense account pending resolution of the matters in issue. If suit is not filed in accordance with the statute, the protest payment will be cleared to the general fund after the expiration of 90 days from the date of payment.

(d) Effective date of change in tax rates. A change in the basic rate of the franchise tax will be applied to all corporations as of the effective date of the change prescribed by the legislature. If an additional tax is enacted for a period after May 1 and ending on the following April 30, the additional tax will be applied to all corporations incorporated or issued a certificate of authority on or prior to the effective date

of the additional tax. However, a corporation is not subject to such additional tax if it is incorporated or issued a certificate of authority after the effective date of the additional tax.]

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 January 16, 1985.

TRD-850480 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
February 22, 1985
For further information, please call
(512) 475-1913.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources Chapter 35. Pharmacy Services

The Texas Department of Human Resources (DHR) proposes amendments to §§35.2, 35.401, 35.609, 35.610, 35.702, 35.706, 35.709, 35.806, 35.902, and 35.904, concerning reimbursement to pharmaceutical providers for acquisition cost of covered drugs and the proper reporting of prescription price on pharmacy claims. The DHR also proposes the repeal of §35.701 and proposes new §35.701 to present two options for the determination of estimated acquisition cost.

The changes in acquisition cost will achieve more accurate reimbursement for the drug portion of claims paid to pharmacy providers and reduce dependence on published average wholesale prices as a basis for Medicaid reimbursement. For years, the Vendor Drug Program has used Redbook as a price source for drug products purchased by provider pharmacies from wholesalers. Drug product manufacturers/distributors supply price information for those purchases that are made direct from the manufacturers/distributors. The accuracy of Redbook price information is now considered of questionable value for reimbursement purposes. Other state Medicaid administrators have reported the same kind of problem with various wholesale price publications.

Medicaid reimbursement was recently reviewed in six states through an audit

project conducted by the Department of Health and Human Services (DHHS). The DHHS auditors examined about 3,500 drug purchases by pharmacists to compare actual acquisition costs to the states' Medicaid reimbursement amounts for these purchases. The project resulted in several important findings: about 80%, or \$1.3 billion, of the nation's total annual Medicaid drug expenditures are reimbursed with average published wholesale price serving as a basis for reimbursement; 99.6% of the audited drug purchases were made at prices below the published average wholesale prices; drug wholesalers routinely provide discounts to pharmacies; the DHHS auditors estimate that as much as \$128 million in national Medicaid expenditures could be saved annually through policy changes that would restrict the use of published average wholesale price information.

These findings have resulted in a federal review of Medicaid reimbursement policies in all states. Since Texas was not included in the DHHS audit project and since that project did not result in a solution to the problem, DHR staff have been conducting a similar effort. The DHR has audited approximately 1,000 drug purchases in 50 provider pharmacies in Texas. Although the final tabulations are not yet completed, the general findings seem to track the federal audit findings. In addition to the field audits, program staff have been working with the Medical Care Advisory Committee Vendor Drug Program Subcommittee to develop policy options.

Two options are proposed, in §35.701(2) and (3). Only one of the options, or a combination of the two, will be adopted.

The changes in proper reporting of prescription price will simplify the pharmacy claims submittal process for pharmacy providers. Currently, a provider must report on a pharmacy claim the prescription price which represents the lower of the usual and customary price charged to the general public; or acquisition cost, plus the provider's assigned dispensing fee.

These changes will enable the providers to utilize their usual and customary pricing policies in determining prices to be billed to DHR for Medicaid pharmacy claims. The DHR will adjust claims to the proper assigned cost plus the assigned dispensing fee when necessary.

David Hawes, programs budget and statistics director, has determined that for the first five-year period the rules will be in effect there will be fiscal implications as a result of enforcing or administering the rules. The estimated cost savings to the state for each fiscal year

are \$817,146 in fiscal year 1983; \$3,804,721 in fiscal year 1986; \$4,312,718 in fiscal year 1987; \$4,786,452 in fiscal year 1988; and \$5,289,073 in fiscal year 1989. There is an anticipated economic cost to local government or small businesses.

Mr. Hawes also has determined that for each year of the first five years the rules are in effect the anticipated public benefit is more accurate reimbursement for drug product costs resulting in cost savings for the program. There are no anticipated economic costs to providers or other individuals required to comply with these rules.

A hearing to accept comments on the proposed amendments will be held at 1 p.m. on February 22, 1985, in the public hearing room, 701 West 51st Street, Austin.

Comments may be sent to Cathy Rosenberg, Administrator, Policy Development Support Division—024, Texas Department of Human Resources 153-E, P.O. Box 2960, Austin, Texas 78769, within 60 days of publication in this *Register*.

Subchapter A. Administration

★ 40 TAC §35.2

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.2. Standards for Tape Input Service Bureau Companies.

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

[(c) Service bureau companies will document claims for compounded prescription with all required information as to the ingredients and quantity of each used, one of which must be a legend drug in therapeutic quantity. The Texas Drug Code Index for all compounded prescriptions in "999-9999-99" and the quantity indication is always shown as "001." The billing price is the acquisition cost of the ingredients used plus the vendor's dispensing fee. A hard copy listing of compounded prescription claims is to be furnished Pharmacy Claims at the close of each calendar month. This report is to be in vendor number order.]

(c)[(d)] Service bureau companies will provide in their computer programs the correct numeric Texas Drug Code for all drugs and package sizes covered by the Texas Drug Code Index and updates [supplements]. Use of a single code to cover a similar drug of several manufacturers cannot be permitted due to the variation in estimated acquisition cost.

(d)[(e)] Sequential numbers must be used by a service bureau company on

claims, beginning with number one to infinity, so that claims can be referenced and located, researched, and audited by the Texas Department of Human Resources (DHR). Duplication of a claim number must be avoided. The sequential number assigned claims by the service bureau company will be the substitute for the preprint number on the Pharmacy Claim form.

(e)[(f)] Each service bureau company will be programmed to handle its [his] vendor's correction. This means that it [he] will have a program in its [his] processing system by which it [he] can recycle corrected claims. Thus dual input by a vendor, partially by tape and partially by use of the Pharmacy Claim form [710], will be avoided. This will facilitate research and auditing in the Vendor Drug Program. It should also give the service bureau company a more complete history of claims it [he] has processed for its [his] vendors.

(f)[(g)] Pharmacy claims resubmittal reports are to be used by the vendor for claims which have been rejected by the Texas Department of Human Resources or for claims needing research on such factors as eligibility, invalid recipient ID, etc., and the vendor will designate on his form that his claims have had tape input. The sequential number assigned by the service bureau company will be used to identify each claim on the pharmacy claims resubmittal report. The forms will be sent directly to Pharmacy Claims.

(g)[(h)] Each service bureau company will submit weekly an updated list of the vendors participating in its [his] processing system. This means that Pharmacy Claims will need notification of participation of new vendors and cancellation of previously participating vendors. It is requested that Pharmacy Services be supplied with a copy of the contract between the service bureau company and its [his] vendors. Pharmacy Claims will need the specific date of beginning participation and of the ending date of participation for those who drop out.

(h)[(i)] Tape record layout must be uniform with the requirements of DHR Office of Information [Data] Systems.

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 January 16, 1985.

TRD-850465

Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Proposed date of adoption:
March 25, 1985

For further information, please call
(512) 450-3786.

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Subchapter E. Medications

★ 40 TAC §35.401

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.401. *Substitution of One Drug for Another in a Prescription.*

- (a) (No change.)
- (b) Where generic equivalents are dispensed, the estimated acquisition cost of the drug used is to be claimed.
- (c) (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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TRD-850466 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Proposed date of adoption:
March 25, 1985

For further information, please call
(512) 450-3766.

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Subchapter G. Pharmacy Claims

★ 40 TAC §35.609, §35.610

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.609. *Pharmacy Claim Magnetic Tape Input.*

- (a) (No change.)
- (b) For each entry, the contracted vendor must supply the tape service bureau with correct information on the recipient's identification number, name of recipient, days' supply, drug code, drug quantity, prescription number, prescription date, date of service, refills authorized, physician's identification number or complete name if ID number is not known, physician's override if applicable, wholesale override if applicable, and [the correct price for the prescription based on acquisition cost plus total fee or] the usual and customary price to the general public[, whichever is lower]. The tape service bureaus may not determine the price nor change the usual and customary price as supplied by the contracted provider.

§35.610. *Submittal of Special Claims.*

- (a) The pharmacy claims submittal report is used to submit claims for prescriptions involving an excessive quantity, price,

or dosage. These require special handling to ensure prompt processing and must be submitted within 60 days of the date of service. The form is also used for the submission of prior eligibility claims. These require special handling since they may be initially rejected due to the age of the claims. The form is also used for the submission of claims for compounded prescriptions. These require special handling to allow approval by the department's regional pharmacists before payment.

- (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 January 16, 1985.

TRD-850467 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

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For further information, please call
(512) 450-3766.

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Subchapter H. Reimbursement

★ 40 TAC §35.701

(Editor's note: The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Texas Department of Human Resources, 701 West 51st Street, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The repeal is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.701. *Legend and Nonlegend Medication.*

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 January 16, 1985.

TRD-850468 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Proposed date of adoption:
March 25, 1985

For further information, please call
(512) 450-3766.

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Subchapter I. Limitations

★ 40 TAC §35.806

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.806. *Pharmacy Services.* Pharmacy services under the Vendor Drug Program include the dispensing to eligible recipients covered legend and nonlegend drugs appearing in the latest revision of the Texas Drug Code Index and updates [supplements]. The Vendor Drug Program covers compounded prescriptions if at least one legend drug (in therapeutic amount) is included in the ingredients; the drugs used and the quantity of each must be listed on the back of the pharmacy claim. The quantity for compounded prescriptions is always one. Covered nonlegend (OTC) drugs, except insulin, will not be reimbursed when dispensed to recipients in hospitals, nursing homes, and 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 January 16, 1985.

TRD-850471 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

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For further information, please call
(512) 450-3766.

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Subchapter J. Texas Drug Code Index

★ 40 TAC §35.902, §35.904

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.902. *Review and Evaluation.*

(a) The department reviews each application to determine if there is a need for the drug to be added to the Texas Drug Code Index (TDCI). In determining need, the department considers:

- (1)-(2) (No change.)
- (3) the cost of the drug to pharmacies compared to other:
 - [(A) Wholesale or direct costs listed in the Redbook (Annual Pharmacists' Reference), and
 - [(B)] other generically equivalent drug products.

(b) The department may deny an application for any of the following reasons:

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

(4) Failure of the drug company to provide the department with the current direct cost to a pharmacy, cost to a wholesaler, or estimated wholesale cost to a pharmacy. [The allowable wholesale and/or direct estimated cost is the cost to a pharmacy, as determined by review of published or nonpublished prices resulting from routine marketing practices. The cost may not exceed the price listed in the Redbook.]

(5)-(6) (No change.)

§35.904. Retention and Deletion of Drugs.

(a) The department reviews the Texas Drug Code Index (TDCI) to evaluate the need for retaining or deleting drugs according to the following criteria.

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

(3) The department may delete a drug if the drug company fails to provide the department the current drug costs. This includes the direct cost to a pharmacy, the cost to a wholesaler, and the estimated wholesale cost to a pharmacy. If the department retains a drug for which the cost was not reported, the department establishes the cost. [The allowable wholesale and/or direct estimated cost is the cost to a pharmacy, as determined by review of published or nonpublished prices resulting from routine marketing practices. The cost may not exceed the Redbook price.]

(4)-(8) (No change.)

(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.

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TRD-850472 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

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March 25, 1985

For further information, please call
(512) 450-3766.

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★ 40 TAC §35.701

The new section is proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.701. Legend and Nonlegend Medication. For all medication, legend and nonlegend, covered by the Vendor Drug Pro-

gram and appearing in the Texas Drug Code Index and updates:

(1) reimbursement to the pharmaceutical provider is based upon estimated acquisition cost, verifiable by invoice audit, plus the Texas Department of Human Resources' (DHR's) currently established dispensing fee per prescription, or the usual and customary price charged the general public, whichever is lower;

(2) estimated acquisition cost is defined as wholesale estimated acquisition cost (WEAC) or direct estimated acquisition cost (DEAC), according to the pharmacist's usual purchasing source and in the pharmacist's usual purchasing quantity, or maximum allowable cost (MAC) as published by the Department of Health and Human Services for selected multisource products. All drug purchases from a central purchasing entity or co-op must be billed to the DHR as direct purchases in the quantities purchased. If the quantities are larger than those shown in the Texas Drug Code Index (TDCI), the largest package size shown in the TDCI will be used for billing and reimbursement purposes. The WEAC is established by the DHR using wholesale cost information supplied by drug manufacturers plus an estimated percentage markup representing wholesaler operating costs and profits. The DEAC is established by the DHR using direct price information supplied by drug manufacturers. The TDCI will be used as the reference for drugs included in the scope of benefits and for allowable package sizes. No acquisition cost will be billed to DHR for samples dispensed.

(3) Estimated acquisition cost is defined as WEAC or DEAC for drugs dispensed from the pharmacist's usual purchasing quantity or MAC as published by the Department of Health and Human Services. The WEAC is established by the DHR using the current Redbook or update less an estimated percentage representing routine discounts received by pharmacists on wholesale drug purchases. The DEAC is established by the DHR using direct price information supplied by drug manufacturers. Pharmacists will be reimbursed using DEAC on all drug products that are available from manufacturers/distributors who actively seek and encourage direct purchasing. The TDCI will be used as the reference for drugs included in the scope of benefits and for allowable package sizes. No acquisition cost will be billed to DHR for samples dispensed.

(4) Reimbursement for nonlegend drugs is based upon the usual and customary price charged to the general public or estimated acquisition cost plus 50% of estimated acquisition cost, whichever is lower. No dispensing fee will be added to the price of nonlegend drugs, and the 50% of estimated acquisition cost may not exceed the provider's assigned dispensing fee.

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 January 16, 1985.

TRD-850469 Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Proposed date of adoption:
March 25, 1985

For further information, please call
(512) 450-3766.

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★ 40 TAC §§35.702, 35.706, 35.709

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22 and Chapter 32, which authorizes the department to administer public assistance programs.

§35.702. Price Changes. Price changes of legend and nonlegend drugs will be effective 30 days after receipt [of the latest edition of the Redbook or supplements] in the Office [offices] of Services to the Aged and Disabled [Special Medical Services], Vendor Drug Product Enrollment, Texas Department of Human Resources. [It is assumed that providers will receive their copies at approximately the same time.]

§35.706. Reimbursement for Compounded Prescriptions. Compounded prescriptions, which consist of two or more drug components admixed, must contain at least one legend drug in therapeutic amount to qualify for reimbursement. Reimbursement [Charges] for compounded prescriptions is based upon estimated acquisition cost of the ingredients used, verifiable by invoice audit, plus the Texas Department of Human Resources' currently established dispensing fee per prescription, or the usual and customary price charged to the general public, whichever is lower [are to be calculated in the same manner as charges for single entity prescriptions]. There is no provision for a compounding fee over and above the dispensing fee.

§35.709. Nonlegend Drug [Drugs] Restrictions.

[(a) The pharmaceutical provider is entitled to reimbursement only for the lower of:

[(1) The usual and customary price charged to the general public; or

[(2) Acquisition cost, plus 50% of acquisition cost.

[(b) No dispensing fee will be added to the price of nonlegend drugs, and the 50% of acquisition cost may not exceed the provider's assigned dispensing fee.

[(c)] Nonlegend drugs, except insulin, will not be reimbursed when dispensed to recipients in nursing facilities and other institutions where those drugs are included in the reimbursement formula, and they may not be charged to the recipients or persons authorized to act for the recipients.

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 January 16, 1985.

TRD-850470

Marlin W. Johnston
Commissioner
Texas Department of
Human Resources

Proposed date of adoption:
March 25, 1985

For further information, please call
(512) 450-3766.

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Withdrawn

Rules

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office and a notice of the withdrawal will appear in the *Register*.



TITLE 28. INSURANCE Part I. State Board of Insurance

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

Life, Health, and Accident Insurance

★059.03.75.006

The State Board of Insurance has withdrawn from consideration for permanent adoption proposed new Rule 059.03.75.006, concerning life, health, and accident insurance. The text of the new rule as proposed appeared in the July 20, 1984, issue of the *Texas Register* (9 Tex-Reg 3910).

Issued in Austin, Texas, on January 15, 1985.

TRD-850452

James W. Norman
Chief Clerk
State Board of Insurance

Filed: January 15, 1985

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

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Adopted

Rules

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the rule with changes to the proposed text, the proposal will be republished with the changes.

TITLE 28. INSURANCE Part I. State Board of Insurance

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

Life, Health, and Accident Insurance

★ 059.03.75.001-.006

The State Board of Insurance adopts new Rules 059.03.75.001-.006, with changes to the proposed text published in the July 20, 1984, issue of the *Texas Register* (9 TexReg 3910).

The new rules concern variable annuity products. They replace Rules 059.03.72.001-.004, which the board has previously repealed. The rules are adopted pursuant to the Insurance Code, Article 3.75, §8. Article 3.75 was enacted by the 68th Legislature, 1983. It repeals Articles 3.39, Part III; 3.72; and 3.73. Article 3.39, Part III, and Article 3.72 apply to variable annuities; Article 3.73 applies to variable life insurance. Article 3.75 was enacted to regulate life insurance and annuity products which vary according to the investment experience of a separate account. These rules are supplementary to Article 3.75. They replace rules previously adopted under Article 3.72.

Two companies commented on the proposed rules. New England Life Insurance Company is concerned that the wording of the rules and Article 3.75 prevent a foreign or alien insurer from doing a variable annuity business in Texas because a foreign or alien insurer cannot establish separate accounts under Texas law since it is not a Texas domestic insurer. The board believes any confusion in this regard should be cleared up. Accordingly, the definitions of "general account" and "separate account" in Rule 059.03.75

.002 are changed, and Rule 059.03.75.004(a) is amended to make it clear that a foreign insurer may do a variable annuity business on the same basis as a Texas domestic insurer, except that a foreign insurer's separate account will be established pursuant to the laws of its state of domicile. The Insurance Code, Article 21.43(a), provides, "The provisions of this Code are conditions on which foreign insurance corporations are permitted to do business in this state." New England Life Insurance Company also pointed out a typographical error in Rule 059.03.75.005(3)(F)(i); the error is corrected.

The Travelers insurance Company (Travelers) made several comments. Travelers suggests that the phrase "or the benefit base for such policies" in Rule 059.03.75.004(b) be removed because those words refer to variable life insurance, not variable annuities. The board agrees, and the rule is amended to delete the provision.

Travelers suggests that the phrase "actuarially determined cost of insurance and" be deleted from Rule 059.03.75.004(g)(3) because it refers to variable life insurance. The board agrees, and the rule is changed to eliminate the provision.

Travelers suggests that the comma following the word "default" in Rule 059.03.75.005(2)(E) be removed because the phrase following "default" modifies "default." The board agrees, and the comma is removed.

Travelers suggests the deletion of the requirement in Rule 059.03.75.005(2)(J) of a policy provision requiring the insurer to mail to the contract holder at least once annually after the first year a statement reporting the investments held in the separate account. Travelers states that similar reporting is already required by federal law. The board disagrees with this comment. The board believes that state law should adequately protect policyholders.

Travelers objects to Rule 059.03.75.005(3)(E)(iii)(I) because the annual contract charges permitted will be too small to cover the company's expenses. Travelers believes the imposition of a maximum

charge is rate making and will require the company to administer a contract on which it is not making a profit and subsidies for actual administrative expenses. While the board does not fully agree with this comment, it does agree to modify the rule by removing the phrase "and 2.0% of the end of year contract value." This will permit a larger administrative cost for contracts with an otherwise very small end of year contract value. The amount permitted may be increased by further rule-making proceedings if it proves inadequate. Moreover, Rule 059.03.75.005(3)(K) permits an insurer to cancel an unprofitable contract under certain conditions.

Travelers believes Rule 059.03.73.005(3)(F)(ii) should define net consideration. The board agrees, and the sentence "The percentage of the net consideration shall be 90%" is added.

Travelers objects to the portion of Rule 059.03.75.004(c)(2) which requires the separate account to have enough net investment income and readily marketable assets to meet anticipated withdrawals under policies funded by the account as not providing a definite guide for insurers to follow. Although the board believes the law requires companies to meet their contractual obligations, it also believes that its regulatory standards should be specific. Accordingly, this provision is deleted, and Rule 059.03.75.004(b) is modified to achieve this purpose.

The agency staff also commented on the proposed rules. The staff suggests that Rule 059.03.75.001 be clarified by adding the words "on and after the effective date of these rules." The board agrees, and the rules are changed accordingly.

The staff suggests that Rule 059.03.75.003(1)(B) be amended to require a charter amendment for already licensed companies wishing to sell variable annuities, instead of a separate certificate of authority. The staff believes that a separate certificate of authority is not necessary to satisfy any statutory requirement and is not appropriate to authorize an insurer to write variable annuities. The board agrees, and the rule is changed to

require a charter amendment only to accomplish this purpose.

The staff suggests that the proposed second sentences of Rule 059.03.75.004(d)(1) and (2) be changed to require insurers to demonstrate that the limitations contained in those paragraphs may be safely waived by the commissioner in lieu of the proposed wording. The board agrees, and the sentences are changed accordingly.

The staff suggests that the proposed first sentence of Rule 059.03.75.005(2)(D)(iii) be modified by deleting the phrase "the contract," because the death benefit coverage refers to variable life insurance. The board agrees, and the rules are changed accordingly.

The staff suggests that proposed Rule 059.03.75.005(3)(D) be amended to state the correct subparagraphs throughout this paragraph. The reference to subparagraph (A) in the first sentence is to be changed to subparagraph (C); the reference to subparagraph (G) in clause (i) is to be changed to subparagraph (H); and the reference to subparagraph (H) in clause (iii) is to be changed to subparagraph (I). The board agrees, and the rule is changed accordingly.

The staff suggests that Rule 059.03.75.005(3)(E) be amended to state subparagraph (F) instead of this paragraph to state the correct subparagraph. The board agrees, and the rule is changed accordingly.

The staff recommends that Rule 059.03.75.005(3)(L) be amended to state subparagraph (E) instead of subparagraph (D) to identify the correct subparagraph. The board agrees, and the rule is changed accordingly.

The staff suggests that Rule 059.03.75.006 be deleted and Rule 059.03.75.007 be renumbered as Rule 059.03.75.006, because the board has, since these rules were proposed in the *Texas Register*, adopted Rules 059.21.01.111-119 to govern all variable contract agents. Proposed Rule 059.03.75.006 is therefore not needed. The board agrees, and the rules are changed accordingly.

The staff believes it is more appropriate and consistent to use the word "contract" to refer to a variable annuity contract rather than using the word "policy." This accords with statutory terminology. The board agrees, and the rules are changed accordingly.

The staff suggests that Rule 059.03.75.005(3)(B) be changed to provide that paragraph (3) as it relates to nonforfeiture benefits does not apply to the matters listed under subparagraph (B). The reserve requirements are applicable to

some of the matters listed. The board agrees with this comment, and the rule is changed accordingly.

The staff recommends that Rule 059.03.75.004(j)(4) be amended by deleting the phrase "as specified in paragraph (4) of this subsection" because it restates the paragraph number. The board agrees, and the rule is changed accordingly.

Other editorial changes and clarifications are made in the first sentence in Rule 059.03.75.005, in Rule 059.03.75.003(B)(1), in Rule 059.03.75.005(3)(B), and in Rule 059.03.75.005(3)(L) and Rule 059.03.75.005(3)(E)(iii), where the clauses are eliminated from the subparagraph for clarity.

These new rules are adopted under the Insurance Code, Article 3.75, §8, which authorizes the State Board of Insurance to establish such rules, regulations, or limitations regarding variable annuity products as may be appropriate for the augmentation and implementation of Article 3.75.

.001. Purpose and Scope. These rules are promulgated to regulate individual and group variable annuity contracts and certificates issued or delivered for issue in this state, on and after the effective date of these rules.

.002. Definitions. The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise:

Agent—Any person, corporation, partnership, or other legal entity which is licensed as a life insurance agent.

Commissioner—The commissioner of insurance of this state.

Flexible premium contract—Any variable annuity contract other than a scheduled premium variable annuity contract.

General account—All assets of the insurer other than assets in separate accounts established pursuant to the Insurance Code, Article 3.75, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer, whether or not for variable annuities.

May—Is permissive.

Scheduled premium contract—Any variable annuity contract under which both the timing and amount of premium payments are fixed.

Separate account—A separate account established pursuant to the Insurance Code, Article 3.75, or pursuant to the corresponding section of the insurance laws of the state of domicile of a foreign or alien insurer.

Shall—Is mandatory.

Variable annuity contract—Any individual annuity contract or group annuity contract or certificate issued in connection

with a group annuity master contract which provides for benefits which vary according to the investment experience of a separate account established and maintained by the insurer as to such contract, pursuant to the Insurance Code, Article 3.75. Annuity benefits may be payable in fixed or variable amounts, or both.

Net investment return—The rate of investment return to be credited to the variable annuity contract in accordance with the terms of the contract after deductions for tax charges, if any, and for asset charges either at a rate not in excess of that stated in the contract, or in the case of a contract issued by a nonprofit corporation under which the contractholder participates fully in the investment, mortality, and expense experience of the account, in an amount not in excess of the actual expense not offset by other deductions. The net investment return to be credited to a contract shall be determined at least monthly.

.003. Qualifications of Insurer to Issue Variable Annuities The following requirements are applicable to all insurers either seeking authority to issue variable annuities in this state or having the authority to issue variable annuity products in this state.

(1) Licensing and approval to do business in this state. An insurer shall not deliver or issue for delivery in this state any variable annuity unless:

(A) the insurer is licensed or organized to do a life insurance business in this state; and

(B) after notice and hearing, the commissioner has authorized, either as part of the insurer's original certificate of authority or by charter amendment, the insurer to issue, deliver, and use variable annuity contracts, and only after he or she has considered, among other things, the following:

(i) whether the plan of operation for the issuance of variable annuity contracts is sound;

(ii) whether the general character, reputation, and experience of the management and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer are such as to reasonably assure competent operation of the variable annuity business of the insurer in this state; and

(iii) whether the present and foreseeable future financial condition of the insurer and its method of operation in connection with the issuance of such contracts is likely to render its operation hazardous to the public or its contractholders in this state. The commissioner shall consider, among other things:

(I) the history of operation and financial condition of the insurer;

(II) the qualifications, fitness, character, responsibility, reputation, and experience of the officers and directors

and other management of the insurer and those persons or firms proposed to supply consulting, investment, administrative, or custodial services to the insurer;

(III) the applicable law and regulations under which the insurer is authorized in its state of domicile to issue variable annuity contracts. The state of entry of an alien insurer shall be deemed its state of domicile for this purpose; and

(IV) if the insurer is a subsidiary of, or is affiliated by common management or ownership with another company, its relationship to such other company and the degree to which the requesting insurer, as well as the other company, meets the standards specified in this subparagraph.

(2) Filing for approval to do business in this state. Before any insurer shall deliver or issue for delivery any variable annuity contract in this state, it must file with the State Board of Insurance the following information and any other information specifically requested, for the consideration of the commissioner, on making the determination required by paragraph (1)(B) of this rule:

(A) copies of and a general description of the variable annuity contracts it intends to issue;

(B) a general description of the methods of operation of the variable annuity business of the insurer, including methods of distribution of contracts and the names of those persons or firms proposed to supply consulting, investment, administrative, custodial, or distributive services to the insurer;

(C) with respect to any separate account maintained by an insurer for any variable annuity, a statement of the investment policy the insurer intends to follow for the investment of the assets held in such separate account, and a statement of procedures for changing such investment policy. The statement of investment policy shall include a description of the investment objectives intended for the separate account;

(D) a description of any investment advisory services contemplated as required by Rule 059.03.75.004 of this title (relating to Separate Accounts);

(E) a copy of the statutes and regulations of the state of domicile of a foreign or alien insurer under which it is authorized to issue variable annuity contracts;

(F) biographical data not previously filed with the commissioner with respect to officers and directors of the insurer on the appropriate biographical form used in Texas; and

(G) a statement of the insurer's actuary describing the mortality and expense risks which the insurer will bear under the contract.

.004. Separate Accounts.

(a) Establishment of separate account. Any domestic life insurance company issuing

variable annuity contracts shall establish one or more separate accounts pursuant to the Insurance Code, Article 3.75.

(1) If no law or other regulation provides for the custody of separate account assets, and if such insurer is not the custodian of such separate account assets, all contracts for custody of such assets shall be in writing and the commissioner shall have authority to review and disapprove both the terms of any such contract and the proposed custodian prior to the transfer of custody.

(2) In connection with the handling of separate account assets, such insurer shall not, without prior written approval of the commissioner, employ in any material manner any person who:

(A) within the last 10 years has been convicted of any felony or a misdemeanor arising out of such person's conduct involving embezzlement, fraudulent conversion, or misappropriation of funds or securities or involving violation of 18 United States Code §§1341, 1342, or 1343, as amended; or

(B) within the last 10 years has been found by any state regulatory authority to have violated or has acknowledged violation of any provision of any state insurance law involving fraud, deceit, or knowing misrepresentation; or

(C) within the last 10 years has been found by federal or state regulatory authorities to have violated or has acknowledged violation of any provision of federal or state laws involving fraud, deceit, or knowing misrepresentation.

(3) All persons with access to the cash, securities, or other assets allocated to or held by the separate account shall be under bond in the amount of not less than \$100,000.

(b) Amounts in the separate account. The insurer shall maintain in each separate account assets with a value at least equal to the valuation reserves for the variable portion of the variable annuity insurance contracts or other contractual liabilities.

(c) Investments by the separate account. No sale, exchange, or other transfer of assets may be made by an insurer or any of its affiliates between any of its separate accounts or between any other investment account and one or more of its separate accounts, unless:

(1) in case of a transfer into a separate account, such transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made; and

(2) such transfer, whether into or from a separate account, is made by a transfer of cash; but other assets may be transferred if approved by the commissioner in advance.

(d) Limitations on ownership.

(1) A separate account shall not purchase or otherwise acquire the securities of any issuer, other than securities issued

or guaranteed as to principal and interest by the United States, if immediately after such purchase or acquisition the value of such investment, together with prior investments of such account in such security valued as required by these rules, would exceed 10% of the value of the assets of the separate account. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or the contract-holders in this state, the commissioner may in writing waive this limitation.

(2) No separate account shall purchase or otherwise acquire the voting securities of any issuer if, as a result of such acquisition, the insurer and its separate accounts in the aggregate will own more than 10% of the total issued and outstanding voting securities of such issuer. Upon appropriate documentation by the company, which evidences that a waiver of this limitation will not render the operation of the separate account hazardous to the public or the contract-holders in this state, the commissioner may in writing waive this limitation.

(3) The percentage limitations specified in paragraph (1) of this subsection shall not be construed to preclude the investment of the assets of separate accounts in shares of investment companies registered pursuant to 15 United States Code §§80b-1 to 80b-21, as amended, or other pools of investment assets if the investments and investment policies of such investment companies or asset pools comply substantially with the provisions of subsection (c) of this rule and other applicable portions of this regulation.

(e) Valuation of separate account assets. Investments of the separate account shall be valued at their market value on the date of valuation, or at amortized cost if it approximates market value.

(f) Separate account investment policy. The investment policy of a separate account operated by a domestic insurer filed under Rule 059.03.75.003(2)(c) of this title (relating to Qualifications of Insurer to Issue Variable Annuities) shall not be changed without first filing such change with the commissioner.

(1) Any change filed pursuant to this subsection shall be effective 60 days after the date it was filed with the commissioner, unless the commissioner notifies the insurer before the end of such 60-day period of his or her disapproval of the proposed change. At any time the commissioner may, after notice and public hearing, disapprove any change that has become effective pursuant to this subsection.

(2) The commissioner may disapprove the change if he or she determines that the change would be detrimental to the interest of the contract-holders participating in such separate account.

(g) Charges against separate accounts. The insurer must disclose in writing,

prior to or contemporaneously with delivery of the contract, all charges that may be made against the separate account, including, but not limited to, the following:

(1) taxes or reserves for taxes attributable to investment gains and income of the separate account;

(2) actual cost of reasonable brokerage fees and similar direct acquisition and sale costs incurred in the purchase or sale of separate account assets;

(3) charges for administrative expenses and investment management expenses, including internal costs attributable to the investment management of assets of the separate account;

(4) a charge, at a rate specified in the policy, for any mortality and expense guarantees;

(5) any amounts in excess of those required to be held in the separate account;

(6) charges for incidental insurance benefits.

(h) Standards of conduct. Every insurer seeking approval to enter into the variable annuity business in this state shall adopt by formal action of its board of directors a written statement specifying the standards of conduct of the insurer, its officers, directors, employees, and affiliates with respect to the purchase or sale of investments of separate accounts. Such standards of conduct shall be binding on the insurer and those to whom it refers. A code of ethics meeting the requirements of 15 United States Code §80a-17, as amended, and applicable rules and regulations thereunder shall satisfy the provisions of this subsection.

(i) Conflicts of interest. Rules adopted under any provision of the Insurance Code or any regulation applicable to the officers and directors of insurance companies with respect to conflicts of interest shall also apply to members of any separate account's committee or other similar body.

(j) Investment advisory services to a separate account. An insurer shall not enter into a contract under which any person undertakes, for a fee, to regularly furnish investment advice to such insurer with respect to its separate accounts maintained for variable annuity contracts unless:

(1) the person providing such advice is registered as an investment adviser under 15 United States Code §§80b-1 to 80b-21, as amended; or

(2) the person providing such advice is an investment manager under 29 United States Code, §1001, *et seq.*, as amended, with respect to the assets of each employee benefit plan allocated to the separate account; or

(3) the insurer has filed with the commissioner and continues to file annually the following information and statements concerning the proposed adviser:

(A) the name and form of organization, and its principal place of business;

(B) the names and addresses of its partners, officers, directors, and persons performing similar functions or, if such an investment advisor be an individual, the name and address of such individual;

(C) a written standard of conduct complying in substance with the requirements of subsection (h) of this rule which has been adopted by the investment advisor and is applicable to the investment advisor, its officers, directors, and affiliates;

(D) a statement provided by the proposed advisor as to whether the advisor or any person associated therewith:

(i) has been convicted within 10 years of any felony or misdemeanor arising out of such person's conduct as an employee, salesman, officer, or director of an insurance company, a banker, an insurance agent, a securities broker, or an investment advisor involving embezzlement, fraudulent conversion, or misappropriation of funds or securities, or involving the violation of 18 United States Code, §§1341, 1342, or 1343;

(ii) has been permanently or temporarily enjoined by an order, judgment, or decree of any court of competent jurisdiction from acting as an investment advisor, underwriter, broker, or dealer, or as an affiliated person or as an employee of any investment company, bank, or insurance company, or from engaging in or continuing any conduct or practice in connection with any such activity;

(iii) has been found by federal or state regulatory authorities to have willfully violated or have acknowledged willful violation of any provision of federal or state securities laws or state insurance laws or of any rule or regulation under such laws; or

(iv) has been censured, denied an investment advisor registration, had a registration as an investment advisor revoked or suspended, or been barred or suspended from being associated with an investment advisor by order of federal or state regulatory authorities; and

(4) such investment advisory contract shall be in writing and provide that it is subject to review and termination by the commissioner at any time, and that it may be terminated by the insurer without penalty to the insurer or the separate account upon no more than 60 days' written notice to the investment advisor. The commissioner may, after notice and opportunity for hearing, by order require such investment advisory contract to be terminated if he or she deems continued operation thereunder to be hazardous to the public or the insurer's contractholders.

.005. Contract Requirements. Variable annuity contracts must conform to the requirements of this rule in order to obtain the commissioner's approval.

(1) Filing of variable annuity contracts. All variable annuity contracts, all riders, endorsements, applications, and

other documents which are attached to and made a part of the contract and which relate to the variable nature of the contract, shall be filed with the commissioner and approved, as applicable, by him or her prior to delivery or issuance for delivery in this state.

(A) Each variable annuity contract and related forms shall be filed according to Rules 059.03.43.001-.008 (Board Order 40701) of this title (relating to Preparation and Submission of Individual Life Insurance and Annuity Forms).

(B) The commissioner may approve variable annuity contracts and related forms with provisions the commissioner deems to be not less favorable to the contractholder, certificateholder, and the beneficiary than those required by these rules.

(2) Mandatory contract provisions. Every variable annuity contract shall contain at least the following.

(A) The cover page or page corresponding to the cover page of each contract shall contain:

(i) a prominent statement that the benefits under the contract are on a variable basis, and

(ii) a prominent statement that the dollar amounts will vary to reflect the investment experience of a separate account or separate accounts.

(B) A full description of the investment increment factors to be used in computing dollar amounts of variable benefits or variable contractual payments of values thereunder, and may guarantee that expense and/or mortality results shall not adversely affect such dollar amounts. In the case of an individual variable annuity contract under which the expense and mortality results may adversely affect the dollar amount of benefits, the expense and mortality factors shall be stipulated in the contract. In computing the dollar amount of variable benefits or other contractual payments or values under an individual variable annuity contract:

(i) the annual net investment increment assumption shall not exceed 5.0% except with the approval of the commissioner;

(ii) to the extent that the level of benefits may be affected by future mortality results, the mortality factor shall be determined from the Annuity Mortality Table for 1949, Ultimate, or any modification of that table not having a higher mortality rate at any age, or, if approved by the commissioner, from another table.

(C) A provision designating the separate account to be used and stating that the portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to such account shall not be chargeable with liabilities arising out of any other business the company may conduct.

(D) As appropriate, a provision for a grace period.

(i) For individual variable annuities which provide for the payment of periodic stipulated payments, a grace period of 31 days within which any stipulated payment to the insurer falling due after the first may be made, during which period of grace the contract shall continue in force. The contract may include a statement of the basis for determining the date as of which any such payment received during the period of grace shall be applied to produce the values under the contract arising therefrom.

(ii) For group variable annuities, a provision that the contractholder or premium payor is entitled to a grace period of 31 days for the payment of any premium due except the first, during which grace period the contract shall continue in force, unless the contractholder or premium payor shall have given the insurer written notice of discontinuance in advance of the date of discontinuance and in accordance with the terms of the contract. The contract may provide that the contractholder or premium payor shall be liable to the insurer for the payment of pro rata premium for the time the contract was in force during such grace period.

(E) A provision that, at any time within two years from the date of default in making periodic stipulated payments to the insurer during the life of the annuitant and unless the cash surrender value has been paid, the contract may be reinstated upon payment to the insurer of such overdue payments as required by contract, and of all indebtedness to the insurer on the contract, including interest. The contract may include a statement of the basis for determining the date as of which the amount to cover such overdue payments and any indebtedness shall be applied to produce the values under the contract arising therefrom.

(F) A unique definition of any cash surrender values available under the contract.

(G) A provision for nonforfeiture benefits as defined in paragraph (3) of this rule.

(H) A provision defining the documents which make up the entire contract.

(I) An identification of the owner of the contract.

(J) A provision stating that the company shall mail to the individual contractholder or group contractholder at least once each year after the first at his or her last address known to the company a statement reporting the investments held in the separate account.

(K) For individual variable annuities, a provision that the company shall mail to the contractholder at least once in each contract year, after the first at his or her last address known to the company, a statement reporting the status of the policy as of a date not more than four months pre-

vious to the date of mailing. In the case of an annuity contract under which payments have not yet commenced, the statement shall contain:

(i) the number of accumulation units credited to such contract and the dollar value of a unit, or

(ii) the value of the contractholder's account.

(3) Reserves and nonforfeiture benefits.

(A) The reserve liability for variable annuities shall be established pursuant to the Insurance Code, Article 3.28, in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(B) The provisions of this paragraph relating to nonforfeiture benefits shall not apply to any:

(i) reinsurance,

(ii) group annuity contract purchases in connection with one or more retirement plan or plans of deferred compensation established or maintained by or for one or more employers (including partnerships or sole proprietorships), employee organizations, or any combination thereof, or other plans providing individual retirement accounts or individual retirement annuities under the Internal Revenue Code, §408, as now or hereafter amended,

(iii) premium deposit fund,

(iv) investment annuity,

(v) immediate annuity,

(vi) deferred annuity contract after annuity payments have commenced,

(vii) reversionary annuity, or

(viii) to any contract which is to be delivered outside this state through an agent or other representative of the company issuing the contract.

(C) To the extent that any variable annuity contract provides benefits which do not vary in accordance with the investment performance of a separate account before the annuity commencement date, such contract shall contain provisions which satisfy the requirements of the Insurance Code, Article 3.44b, and shall not otherwise be subject to this rule.

(D) No variable annuity contract, except as stated in subparagraph (B) and subparagraph (C) of this paragraph, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the commissioner are at least as favorable to the contractholder, upon cessation of payment of considerations under the contract.

(i) That upon cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan described in the contract that complies with subparagraph (H) of this paragraph. Such description shall include a statement of the mortality table, if any, and guaranteed or assumed interest rates used in calculating annuity payments.

(ii) If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash surrender benefit as described in the contract that complies with subparagraph (I) of this paragraph. The contract may provide that the company reserves the right, at its option, to defer the determination and payment of any cash surrender benefit for any period during which the New York Stock Exchange is closed for trading (except for normal holiday closing) or when the Securities and Exchange Commission has determined that a state of emergency exists which may make such determination and payment impractical.

(iii) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract, or any prior withdrawals from or partial surrenders of the contract.

(E) The minimum values as specified in this rule of any paid-up annuity, cash surrender, or death benefits available under a variable annuity contract shall be based upon nonforfeiture amounts meeting the requirements of this paragraph. The minimum nonforfeiture amount on any date prior to the annuity commencement date shall be an amount equal to the percentages of net considerations (as specified in subparagraph (F) of this paragraph) increased (or decreased) by the net investment return allocated to the percentages of net considerations, which amount shall be reduced to reflect the effect of:

(i) any partial withdrawals from or partial surrenders of the contract;

(ii) the amount of any indebtedness on the contract, including interest due and accrued;

(iii) an annual contract charge not less than zero nor greater than \$30 less the amount of any annual contract charge deducted from any gross considerations credited to the contract during such contract year; and

(iv) a transaction charge of \$10 for each transfer to another separate account or to another investment division within the same separate account.

(F) The percentages of net considerations used to define the minimum nonforfeiture amount in subparagraph (E) of this paragraph shall meet the requirements of this subparagraph.

(i) With respect to contracts providing for periodic considerations, the net considerations for a given contract year used to define the minimum nonforfeiture

amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of \$30 and less a collection charge of \$1.25 per consideration credited to the contract during that contract year. The percentages of net considerations shall be 65% for the first contract year and 87.5% for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be 65% of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was 65%.

(ii) With respect to contracts providing for a single consideration, the net consideration used to define the minimum nonforfeiture amount shall be the gross consideration less a contract charge of \$75. The percentage of the net consideration shall be 90%.

(G) Demonstration that a contract's nonforfeiture amounts comply with this paragraph shall be based on the following assumptions:

(i) values should be tested at the ends of each of the first 20 contract years;

(ii) a net investment return of 7.0% per year should be used;

(iii) if the contract provides for transfers to another separate account or to another investment division within the same separate account, one transfer per contract year should be assumed;

(iv) with respect to contracts providing for periodic considerations, monthly considerations of \$100 should be assumed for each of the first 240 months;

(v) with respect to contracts providing for a single consideration, a \$10,000 single consideration should be assumed; and

(vi) if the contract provides for allocation of considerations to both fixed and variable accounts, 100% of the considerations should be assumed to be allocated to the variable account.

(H) Any paid-up annuity benefit available under a variable annuity contract shall be such that its present value on the annuity commencement date is at least equal to the minimum nonforfeiture amount of the date. Such present value shall be computed using the mortality table, if any, and the guaranteed or assumed interest rates used in calculating the annuity payments.

(I) For variable annuity contracts which provide cash surrender benefits, the cash surrender benefit at any time prior to the annuity commencement date shall not be less than the minimum nonforfeiture amount next computed after the request for surrender is received by the company. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

(J) Any variable annuity contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the annuity commencement date shall include a statement in a prominent place in the contract that such benefits are not provided.

(K) Notwithstanding the requirements of this rule, a variable annuity contract may provide under the situations specified in clause (i) or clause (ii) of this subparagraph that the company, at its option, may cancel the annuity and pay the contractholder its accumulated value and by such payment be released of any further obligation under such contract:

(i) if at the time the annuity becomes payable the accumulated value is less than \$2,000, or would provide an income the initial amount of which is less than \$20 per month; or

(ii) if prior to the time the annuity becomes payable under a periodic payment variable annuity contract no considerations have been received under the contract for a period of two full years, and both:

(I) the total considerations paid prior to such period, reduced to reflect any partial withdrawals from or partial surrenders of the contract, and

(II) the accumulated value, amount to less than \$2,000.

(L) For any variable annuity contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits shall be equal to the sum of the minimum nonforfeiture benefits for the annuity portion and the minimum nonforfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of subparagraph (E) of this paragraph, additional benefits payable in the event of total and permanent disability, as reversionary annuity or deferred reversionary annuity benefits, or as other contract benefits additional to life insurance, endowment, and annuity benefits, shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits required by this rule. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits

(4) Applications. The application for a variable annuity contract shall contain:

(A) a prominent statement that the benefits may increase or decrease in accordance with the experience of a separate account, and

(B) the portion of the premium allocable on the date of issue to any fixed dollar benefits and the portion allocable on the date of issue to the variable benefits.

.006. *Separability.* If any provision of these rules or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of these rules and the application of such provision to other persons or circumstances shall not be affected thereby.

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 January 15, 1985.

TRD-850454

James W. Norman
Chief Clerk
State Board of Insurance

Effective date: February 5, 1985

Proposal publication date: July 20, 1984

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

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Credit Insurance Applications and Policies

★ 059.53.02.003

The State Board of Insurance adopts an amendment to Rule 059.53.02.003, without changes to the proposed text published in the October 26, 1984, issue of the *Texas Register* (9 TexReg 5530).

Paragraph (9) of the rule requires policies to specify that, in case a policy is terminated prior to maturity, a refund of unearned premiums will be made, except that no refund is necessary if the total amount is less than \$3.00. This provision tracks statutory language specified in the Insurance Code, Article 3.53, §8(B). However, Attorney General Opinion MW-511 (1982), in response to an opinion request from the Consumer Credit Commissioner, opines that, for credit transactions covered by the Texas Credit Code, Subtitle 2, consumer credit chapters, all unearned credit insurance premiums must be refunded, except for amounts totaling less than \$1.00. Accordingly, the board believes an amendment to the rule should provide that for transactions covered by the Texas Credit Code, Texas Civil Statutes, Article 5069, Chapters 3-6, 6A, 7, and 15, no cash refund shall be required if the amount thereof is less than \$1.00.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 3.53, §12, pur-

suant to which the State Board of Insurance may, after notice and hearing, issue such rules and regulations as it deems appropriate for the supervision of Article 3.53.

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 January 11, 1985.

TRD-850404 James W. Norman
Chief Clerk
State Board of
Insurance

Effective date: February 4, 1985
Proposal publication date: October 26, 1984
For further information, please call
(512) 475-2950.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 361. Drilled or Mined Shafts

Subchapter A. General Provisions

★31 TAC §§361.1-361.19

The Texas Water Development Board adopts new §361.18, with changes to the proposed text published in the October 5, 1984, issue of the *Texas Register* (9 TexReg 5140). Sections 361.1-361.17 and 361.19 are adopted without changes and will not be republished.

The new sections are the result of Senate Bill 1018, which amended the Texas Water Code, Chapter 28, effective May 18, 1983. These sections initiate a system of permitting and regulation for drilled or mined shafts, and integrate that system into the department's regulatory framework.

The first proposal of these new sections was on September 23, 1983. Public hearings were held November 9, 1983, in Amarillo and November 18, 1983, in Austin. Those proposals were withdrawn on February 17, 1984. In response to comments, the sections were repropoed on February 21, 1984. Public hearings were held February 21, 1984, in El Paso, and on February 23, 1984, before the Senate Natural Resources Committee in San Angelo. Those proposals were withdrawn on August 24, 1984. Most recent

sections were proposed on October 5, 1984.

A shaft, for the purposes of these sections, is any vertically oriented excavation, whether constructed by drilling or mining techniques, where the depth of the excavation is greater than its diameter, the excavation penetrates into or through the base of the uppermost water-bearing strata, and the primary purpose of the excavation is the transport of workers and materials to and from a destination, at depth, for purposes of geological studies, access to existing and planned subsurface mine workings, safety, or for ventilation of those workings. A shaft must penetrate a major or minor aquifer and be a new shaft to be subject to these sections (§361.2). The sections regulate only the permitting, construction, operation, and decommissioning of the shaft.

Appendix A, (§361.19) identifies the procedures necessary for the authorization and decommissioning of a drilled or mined shaft. These procedures are based on hydrologic, hydrogeologic, and geotechnical considerations. Construction, operating, and monitoring and reporting standards are listed in §361.11, §361.13, and §361.14, respectively. Section 361.9 and §361.17 identify requirements concerning the application fee, financial assurances, litigation status, and coordination with the Railroad Commission of Texas, Texas Department of Health, Texas Air Control Board, Texas Parks and Wildlife Department, and the commissioners court of the affected county.

Comments by John Peck express the opinion that some of the requirements in the proposed sections are unnecessary. Specifically mentioned were: in §361.6(a), concerning a seismic reflection survey; in §361.9(d), concerning written approval of the executive director to drill an engineering design test hole; and in §361.9(c)(6), requiring a statement concerning the current status of any litigation involving the formations project. These items are included in the sections because they are explicitly required by the Texas Water Code, §28.035. Another of Mr. Peck's comments expresses the concern that §361.13(b)(1) does not take into consideration mine shafts which use controlled seepage through liners as a necessary component of their design. However, §361.13(b)(3) does allow such shafts since it requires that the executive director may require a shaft and mine water management plan be submitted as part of the shaft permit application for a shaft that may have inflows of ground water. Mr. Peck also suggests that in §361.18 the requirement that shaft seal mix designs shall be based on formula-

tions developed for borehole sealing may legally exclude other formulations possibly more appropriate for sealing large diameter shafts. This is a good point, and the wording of the requirement has been changed to remove the reference to borehole sealing formulations.

The remaining comment made by Mr. Peck that the proposed sections in §361.8(b) and §361.17(a)(7), giving the executive director the discretionary authority to require additional information to evaluate the shaft permit applications, and to require the recording of additional information beyond that enumerated in the sections, can cause an excessive burden on the applicant. He asserts that an applicant not knowing what may be required of him will be unable to ascertain with any degree of certainty the ultimate costs of a mining project.

The department maintains that these provisions give a much needed flexibility in gathering information necessary to process an application. It would be difficult, if not impossible, to list in the sections all the items of information that may be needed in any particular case. Additionally, the burden of satisfying such a comprehensive list of factors may be unwarranted in some cases. This discretionary authority to ask for further information exists in other programs and has not proven to be burdensome in practical usage to applicants.

Finally, comments by W. T. Haenggi suggest that the sections be written to apply only to shafts penetrating major aquifers. His proposition is that it would be generally desirable to minimize the effect of the shaft rules on the mining industry by limiting their applicability in this way.

A narrow applicability should be avoided, because the Texas Water Code, §28.001, defines a shaft to be an excavation that penetrates into or through the base of the uppermost water-bearing strata. This provision is expansive, not limiting, and the board believes the intent was not to limit to major aquifers.

The new sections are adopted under the Texas Water Code, §§5.131, §5.132, and §28.021, *et seq*, which gives the Texas Water Development Board authority to promulgate rules and regulate shafts.

§361.18. Decommissioning. Shaft decommissioning and closure shall be in accordance with plans and specifications approved by the executive director. Decommissioning seals shall be placed in the shaft so as to prevent the migration of fluids into a major or minor aquifer. Shaft seal mix designs shall be compatible with existing lining, if applicable, and adjacent strata.

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 January 10, 1985.

TRD-850402 Susan Plattman
General Counsel
Texas Department of
Water Resources

Effective date: February 4, 1985
Proposal publication date: October 5, 1984
For further information, please call
(512) 475-7845

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**TITLE 37. PUBLIC SAFETY
AND CORRECTIONS**
Part VII. Texas Commission
on Law Enforcement
Officer Standards and
Education
Chapter 211. Administrative
Division
Substantive Rules

★ 37 TAC §§211.80, 211.83, 211.86,
211.87

The Texas Commission on Law Enforcement
Officer Standards and Education

adopts amendments to §§211.80, 211.83, 211.86, and 211.87, without changes to the proposed text published in the December 14, 1984, issue of the *Texas Register* (9 TexReg 6307).

The amendments ensure that peace officers, reserve law enforcement officers, and jailers or guards of county jails that have final convictions rendered against them are permanently revoked of their law enforcement officer certification or are permanently barred from serving as law enforcement officers.

The amendments authorize the agency to deny law enforcement certification to applicants who have had final felony convictions rendered against them and to initiate and proceed with license revocation actions against law enforcement officers who are convicted of felony offenses.

One comment in support of the amendments was received from John C. West, Jr., general counsel, Texas Department of Public Safety.

The amendments are adopted under Texas Civil Statutes, Article 4413(29aa), §2, which provide the commission with the authority to establish minimum standards that relate to competence and reliability, including educational, training, physical, mental, and moral standards for licensing as a peace officer, jailer, or guard of a county jail, or reserve law enforcement officer in permanent positions and in temporary or probationary status.

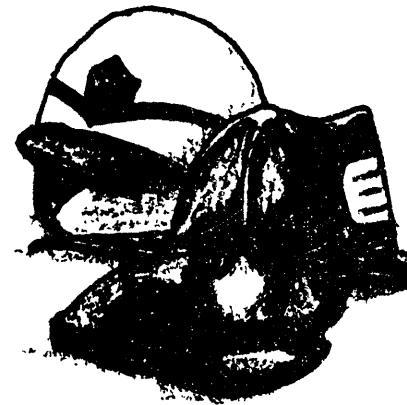
This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 14, 1985.

TRD-850438 Alfredo Villarreal
General Counsel
Texas Commission on
Law Enforcement
Officer Standards and
Education

Effective date: February 5, 1985
Proposal publication date: December 14, 1984
For further information, please call
(512) 834-9222.

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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 *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Department of Agriculture

Monday, January 28, 1985. The Texas Department of Agriculture will conduct administrative hearings in the conference room, 10th floor, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Times and agendas follow.

10 a.m. The department will review possible violations of the Texas Agriculture Code, §76.111(a) and (g) and §76.116(a)(5), by Derry F. Taylor, doing business as Hendrix and Dail, Inc., holder of a commercial applicator's license.

11 a.m. The department will review possible violations of the Texas Agriculture Code, §76.111(a) and (g) and §76.116(a)(5), by Tom Knox, doing business as Knox Aerial Spraying Service, holder of a commercial applicator's license.

1:30 p.m. The department will review possible violations of the Texas Agriculture Code, §76.111(a) and (g) and §76.116(a)(5), by Darrell R. Fisk, doing business as B&B Flying Service, holder of a commercial applicator's license.

2:30 p.m. The department will review possible violations of the Texas Agriculture Code, §76.111(a) and (g) and §76.116(a)(5), by Roy P. Conway, doing business as Customaire Corporation, holder of a commercial applicator's license.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 475-6686.

Filed: January 15, 1985, 1:55 p.m.
TRD-850439-850442

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Texas Alcoholic Beverage Commission

Monday, January 28, 1985, 10:30 a.m. The Texas Alcoholic Beverage Commission will meet in Suite 210, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will ap-

prove the November 26, 1984, minutes and affidavits of destruction of tested alcoholic beverages and hear the administrator's and staffs' reports of agency activity.

Contact: W. S. McBeath, P.O. Box 13127, Austin, Texas 78711, (512) 458-2500.

Filed: January 15, 1985, 12:52 p.m.
TRD-850435

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Texas Antiquities Committee

Monday, January 21, 1985, 9:30 a.m. The Texas Antiquities Committee made emergency additions to the agenda of a meeting held in Room 103, E. O. Thompson Building, 920 Colorado Street, Austin. The additions concerned designation of state archaeological landmarks, including archaeological sites and the Cervantes site (41PS320). The emergency status was necessary because the committee received last-minute approval from the state archaeologist's office.

Contact: Robert Mabry, 105 West 16th Street, Austin, Texas 78711, (512) 475-6328.

Filed: January 16, 1985, 9:27 a.m.
TRD-850473

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State Bar of Texas

Thursday, January 24, 1985, 10 a.m. The Executive-Budget Committee of the State Bar of Texas will meet in the Niles City Room, Stockyards Hotel, Main and Exchange Streets, Fort Worth. According to the agenda summary, the committee will hear a report on board meeting attendance; hear reports of the president-elect, the executive director, the immediate past president, the board chairman, the Supreme Court liaison, the general counsel, and the Insurance Trust on a complaint matter; con-

sider an amendment to disciplinary procedural rules; and hear a report on the 1985 convention.

Contact: Evelyn Avent, 1414 Colorado Street, Austin, Texas 78701, (512) 475-4746.

Filed: January 16, 1985, 2:30 p.m.
TRD-850487

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Texas State Board of Dental Examiners

Thursday-Saturday, January 24-26, 1985, 8 a.m. daily. The Texas State Board of Dental Examiners made additions to the agenda of a meeting to be held at the Hyatt Regency Hotel, 300 Reunion Boulevard, Dallas. The additions concern approval of anesthesia applications and discussion of motions for rehearings; the committee report on legal counsel; the attorney general's opinion; and pictures for the board office.

Contact: William S. Nail, 411 West 13th Street, Suite 503, Austin, Texas 78701, (512) 475-2443.

Filed: January 16, 1985, 3:40 p.m.
TRD-850489

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Texas Education Agency

Saturday, February 2, 1985. The Committee for Students of the State Board of Education of the Texas Education Agency (TEA) will meet in the boardroom, TEA North Building, 1200 East Anderson Lane, Austin. Times and agendas follow.

9:30 a.m. The committee has identified discipline management as an area of House Bill 72 for which rules should be adopted as soon as possible and will conduct a public hearing to solicit recommendations from in-

dividuals and organizations interested in this topic. Persons wishing to testify should contact Walter Rambo at (512) 475-6838 to be placed on the agenda. Persons may register to testify at the hearing provided that available time has not been allocated to people who preregistered. Testifiers are requested to bring 10 copies of their testimony to the hearing so that they can be made available to committee members. Testimony is limited to five minutes, but the time allotment may be adjusted depending on the number of persons who wish to testify.

Contact: Walter Rambo, 201 East 11th Street, Austin, Texas 78701, (512) 475-6838

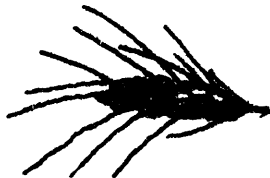
Filed: January 15, 1985, 4:23 p.m.
TRD-850457

1:30 p.m. The committee will discuss proposed rules concerning discipline management.

Contact: W. N. Kirby, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: January 15, 1985, 4:23 p.m.
TRD-850458

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Employees Retirement System of Texas

Thursday, January 24, 1985, 9 a.m. The Board of Trustees of the Employees Retirement System of Texas (ERS) will meet at the ERS Building, 18th and Brazos Streets, Austin. According to the agenda summary, the board will approve the October 29 and December 13, 1984, minutes; hear a report on retirement and death benefits paid from November 1-December 31, 1984, and a report on payments to survivors of law enforcement officers and firemen since November 30, 1984; review the auditor's report for the year ending August 31, 1983; consider and act on Frank J. Wilson's December 13, 1984, proposal, an addition to the approved dealers list, and a request for proposal of banking services; consider and adopt an actuarial asset valuation; hear a report from Rudd and Wisdom, Inc.; consider a contested case appeal of Marilyn Couch; discuss and act on the adoption of proposed changes to 34 TAC §81.15 and additions to 34 TAC §81.1; consider proposed changes to 34 TAC §81.11(g)(9); consider and act on rates, coverages, and administration of the Uniform Group Insurance Program; hear the executive director's report; and confirm February 28, 1985, as the date of the next meeting. The board also will meet in executive session.

Contact: Clayton T. Garrison, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431.

Filed: January 16, 1985, 9:02 a.m.
TRD-850461

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Texas Health Facilities Commission

Thursday, January 24, 1984, 1:30 p.m. The Texas Health Facilities Commission will meet in Suite 305, Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the following applications.

Certificate of Need

Oak Creek Hospital, Houston

AH84-0531-317

Harris Hospital H.E.B., Bedford

AH84-0424-255

Memorial Care Center, Texas City

AN84-0702-433

Twin Lakes Care Center, San Augustine

AN84-0608-380

Nix Medical Center, San Antonio

AH84-0731-501

Amendment of Certificate of Need Orders

Methodist Central Hospital, Dallas

AH80-0115-015A(121484)

Corinth Manor Nursing Home, Dallas

AN81-0409-013A(120484)

St. Anthony's Hospital, Amarillo

AH82-0628-054A(120684)

Heartland of Houston, Houston

AN83-0805-084A(120784)

Stevens Convalescent Center, Inc.,

Hallettsville

AN83-0624-650A(121384)

Westcliff Manor Nursing Home,

Amarillo

AN83-0825-129A(010385)

Pebble Creek Convalescent Center, San

Antonio

AN84-0416-232A(112984)

Declaratory Rulings

Children's Medical Center of Dallas,

Dallas

AH84-1212-792

GSHS Realty Corporation, a general

partner in Medical Plaza Limited

Partnership, Longview

AO84-1214-804

Motion for Rehearing/Petition for

Reconsideration

Charter Garland Hospital, Garland

AH83-0506-472

Contact: John R. Neel, P.O. Box 50049, Austin, Texas 78763.

Filed: January 16, 1985, 9:33 a.m.
TRD-850474

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Texas Housing Agency

Thursday, January 24, 1985, 10 a.m. The Board of Directors of the Texas Housing Agency will meet in the conference room, Suite 700, 411 West 13th Street, Austin. According to the agenda summary, the board will consider a resolution authorizing and approving the issuance, sale, and delivery of approximately \$13.2 million worth of multifamily housing revenue bonds and the Federal National Mortgage Association Guaranteed Pass-Through Certificate Program (Bell Tower development, 1985 Series A); and approve the form and substance of a trust indenture, a series trust indenture, an owner commitment agreement, a financing agreement, a mortgage purchase agreement, an agreement to issue mortgage pass-through certificates, a collateral agreement, a contract of purchase, a preliminary official statement, and an official statement (if available).

Contact: Earline Jewett, P.O. Box 13941, Austin, Texas 78711, (512) 475-0812.

Filed: January 16, 1985, 4:11 p.m.
TRD-850491

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Texas Commission on Human Rights

Friday and Saturday, January 25 and 26, 1985, 2 p.m. and 9:30 a.m. respectively. The Texas Commission on Human Rights will meet in Room 213, State Capitol, Austin. According to the agenda summary, the commission will consider approval of the minutes; discuss a revised worksharing agreement; consider the working relationship with the commission related to handicapped persons, budgetary matters, administrative reports, annual reports, and plans for the EEO conference; discuss the annual FEP/EEOC conference, administrative closure of cases following 180-day issuance of a notice of right to file civil action, and staff and commissioner training; and consider unfinished business.

Contact: William M. Hale, 7215 Cameron Road, Austin, Texas 78752, (512) 459-0944.

Filed: January 16, 1985, 1:16 p.m.
TRD-850482

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State Board of Insurance

Friday, January 25, 1985, 9 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the board will hear a research and information services report.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: January 17, 1985, 9:22 a.m.
TRD-850509

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Job Training Partnership Act Legislative Oversight Committee

Friday, February 1, 1985, 9:30 a.m. The Job Training Partnership Act Legislative Oversight Committee will meet in the conference room, Texas Department of Community Affairs, 2015 IH 35 South, Austin. Items on the agenda include a program update, a report from the State Job Training Coordinating Council representative, a presentation by the Texas Association of Private Industry Councils, an appearance by the Association of Employment and Training Directors of Texas, and other business.

Contact: Paula Campbell, State Capitol, Room 413, Austin, Texas, (512) 475-5973.

Filed: January 16, 1985, 12:25 p.m.
TRD-850481

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Board of Law Examiners

Thursday-Sunday, January 24-27, 1985, 8:15 a.m. daily Thursday-Saturday and 8 a.m. Sunday. The Board of Law Examiners will meet at the Texas Law Center, 1414 Colorado Street, Austin, Thursday-Saturday; and the Marriott Hotel, 6121 IH 35 North, Austin, on Sunday. According to the agenda, the board will consider the November 1984 minutes; review the fiscal year 1985 budget, including consideration of amendments and equipment purchase; discuss the February 1985 bar examination and prepare questions; discuss legislation; review personnel matters; conduct Rule VII(f) formal reviews; consider special requests and questions of eligibility; and conduct hearings on character and fitness.

Contact: Wayne E. Denton, Texas Law Center, Suite 505, 1414 Colorado Street, Austin, Texas 78701, (512) 475-4137.

Filed: January 16, 1985, 2:21 p.m.
TRD-850486

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Legislative Council

Sunday and Monday, January 27 and 28, 1985, 3 p.m. and 9 a.m. respectively. The

Legislative Oversight Committee on Mental Health and Mental Retardation of the Legislative Council will meet in Room 503-G, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda, the committee will conduct a work session on Sunday to plan the outline of mental retardation recommendations and make subcommittee assignments. On Monday the committee will consider presentations by consultants on the issues in the delivery of mental retardation services in Texas, the implications for Texas of current research in mental retardation, and the experiences of other states.

Contact: Karen F. Hale, 1111 West 24th Street, Austin, Texas 78705, (512) 476-0611.

Filed: January 16, 1985, 2:52 p.m.
TRD-850488

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Texas State Board of Medical Examiners

Tuesday, January 15, 1985, 3 p.m. The Executive Committee of the Texas State Board of Medical Examiners met in emergency session via conference call originating from 606 South Broadway, McAllen. According to the agenda, the committee met in executive session under authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, §4.05(d) and §5.06(e)(1), and Attorney General Opinion H-484, 1974, and specifically Article 6252-17, §2(g), to discuss personnel matters. The emergency status was necessary because information on this matter became available and required immediate attention. This matter will be referred to at a later meeting.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: January 15, 1985, 10 a.m.
TRD-850427

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State Pension Review Board

Wednesday, January 23, 1985, 8:30 a.m. The Legislative Advisory Committee of the State Pension Review Board will meet in Senator Traeger's office, Room G-35-B, State Capitol, Austin. According to the agenda, the committee will discuss upcoming legislation.

Contact: Bette Meadows, P.O. Box 13498, Austin, Texas 78711, (512) 475-8332.

Filed: January 15, 1985, 2:29 p.m.
TRD-850436

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State Property Tax Board

Monday, January 28, 1985, 9 a.m. The State Property Tax Board will meet in the agency conference room, 9501 IH 35 North, Austin. According to the agenda, the board will approve the December 12 and 13, 1984 minutes; consider changes in the "Pipelines" section of the *General Appraisal Manual* concerning valuation of easements; the proposed report on delinquent taxes to the 69th Legislature; a permanent amendment to 34 TAC §155.31 repealing the form for bank rendition of taxable property; procedures to appoint appeals panels for the 1984 school district value study update; and an update on proceedings of the 69th Legislature, 1985.

Contact: Ron Patterson, 9501 IH 35 North, Austin, Texas 78767, (512) 834-4800.

Filed: January 16, 1985, 3:58 p.m.
TRD-850490

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Texas State Board of Public Accountancy

Thursday and Friday, January 24 and 25, 1985, 8:30 a.m. The Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda summary, the board will conduct committee meetings and hearings and consider action on committee recommendations and transaction of other board business.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78762, (512) 451-0241.

Filed: January 15, 1985, 3:27 p.m.
TRD-850454

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Texas Department of Public Safety

Thursday, January 24, 1985, 10 a.m. The Public Safety Commission of the Texas Department of Public Safety will meet at 5805 North Lamar Boulevard, Austin. Items on the agenda include approval of the minutes, budget matters, personnel matters, and other unfinished business.

Contact: James B. Adams, 5805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2000, ext. 3700.

Filed: January 16, 1985, 9:05 a.m.
TRD-850462

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Public Utility Commission of Texas

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Thursday, January 24, 1985, 9 a.m. The commissioners will consider Dockets 5858, 5935, 6027, 5955, 5561 and 5279, 5820, 5878, 5912, 5957, 5596, 5804, 5728, 5770, 5782, 5361, 5894, 5892, 5713, 5850, 5818, 5921, 5927, 5807, 5882, 5919, 5924, 5933, 5934, 5942, 4854, 4960, 5355, 5447, 5448, 5516, 5677, 5744, 5765, 5808, 5906, and 5755, and permanent adoption of 16 TAC §23.46(i). The commissioners also will meet in executive session to consider pending litigation and personnel matters.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 16, 1985, 10:19 a.m.
TRD-850481

Monday, January 28, 1985, 10 a.m. A pre-hearing conference in Docket 6008—complaint of South Grayson Water Supply Corporation against the City of Anna.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 15, 1985, 1:58 p.m.
TRD-850443

Thursday, January 31, 1985, 10 a.m. A rescheduled hearing in Docket 5922—application of Country Side Estates/Newton and Company for a water and sewer rate increase within Jefferson County. The hearing originally was scheduled for January 24, 1985, as published at 9 TexReg 5767.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 15, 1985, 1:58 p.m.
TRD-850444

Monday, April 1, 1985, 10 a.m. A rescheduled hearing on the merits in Docket 5922—application of Southwestern Bell Telephone Company to establish feature group "E" (FGE) access service for radio and cellular common carriers. The hearing originally was scheduled for January 28, 1985, as published at 9 TexReg 5552.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 16, 1985, 9:28 a.m.
TRD-850475

Tuesday, April 2, 1985, 9 a.m. A hearing in Docket 4675—application of Hill Country Water Supply Corporation for a certificate of convenience and necessity within Travis and Hays Counties.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 16, 1985, 9:28 a.m.
TRD-850476

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State Securities Board

Thursday, February 7, 1985, 10 a.m. The Securities Commissioner of the State Securities Board will conduct a hearing at 1800 San Jacinto Street, Austin. According to the agenda summary, the commissioner will determine whether the determination of the staff that the application of the National Association of Securities Dealers, Inc. (NASD), under the Texas Securities Act, Texas Civil Statutes, Article 581, §6.F, was filed in error is correct.

Contact: A. J. Ellisor, 1800 San Jacinto Street, Austin, Texas 78701.

Filed: January 15, 1985, 3:55 p.m.
TRD-850455

Tuesday, February 26, 1985, 10 a.m. The Securities Commissioner of the State Securities Board rescheduled a meeting to be held in Suite 114, 3100 West Alabama, Houston. According to the agenda summary, the commissioner will conduct a hearing to determine whether a cease and desist order should be issued prohibiting the sale of securities issued by Central Mortgage and Trust, Inc.; John Signorelli, both individually and as president of Central Mortgage and Trust, Inc.; and Sue Frericks and Carolyn Thornton. The meeting originally was scheduled for January 21, 1985, as published at 10 TexReg 51.

Contact: A. J. Ellisor, 1800 San Jacinto Street, Austin, Texas 78701.

Filed: January 15, 1985, 3:55 p.m.
TRD-850456

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State Seed and Plant Board

Monday, January 28, 1985, 9:30 a.m. The Seed Division of the State Seed and Plant Board will meet in the Preston Hollow Room, Dallas Hilton Inn, 5600 North Central Expressway, Dallas. According to the agenda summary, the division will consider all items of business pertaining to seed and plant certification requiring action, including consideration of applications for license as certified seed growers and applications for approval of new crop variety releases.

Contact: Kenneth Boatwright, P.O. Box 12847, Austin, Texas, (512) 475-2038.

Filed: January 15, 1985, 10:30 a.m.
TRD-850429

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Texas Sesquicentennial Commission

Wednesday, February 13, 1985, 9:30 a.m. The Texas Sesquicentennial Commission will meet in the conference room, ground floor, Texas Commission for the Deaf, 510 South Congress, Austin. According to the agenda, the commission will approve minutes for the fourth quarterly commission meeting; hear the director's report; and consider applications for sanctioning from communities, counties, and associations; private sector logo applications; the Executive Committee report; promotional and commemorative product report and guidebook report; and other business. The commission also will meet in executive session.

Contact: Joann Brown, 510 South Congress Avenue, Suite 116, Austin, Texas 78704, (512) 475-1986.

Filed: January 16, 1985, 9:28 a.m.
TRD-850477

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University System of South Texas

Thursday, January 17, 1985, 3 p.m. The Presidential Search Committee of the Board of Directors of the University System of South Texas (USST) met in emergency session in the boardroom, USST, two miles west on State Highway 141, Kingsville. According to the agenda, the committee met in open and executive session. The emergency status was necessary as this was the only time available to obtain a quorum.

Contact: William C. English, P.O. Box 1238, Kingsville, Texas 78363, (512) 595-2208.

Filed: January 15, 1985, 1:58 p.m.
TRD-850445

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Teachers' Professional Practices Commission of Texas

The Teachers' Professional Practices Commission of Texas will meet in Room 101-E,

Texas Education Agency North Building, 1200 East Anderson Lane, Austin. Days, times, and agendas follow.

Friday, January 25, 1985, 9 a.m. The commission will work on proposed changes in the commission's rules of procedure.

Saturday, January 26, 1985, 9:15 a.m. The commission will hear the director's report on pending cases; discuss and act on proposed changes to §.024 concerning action upon complaint; discuss recommendations from the January 25, 1985, commission workday concerning proposed changes in the commission's rules of procedure; and establish meeting dates for the remainder of the year.

Contact: James A. Salmon, 201 East 11th Street, Austin, Texas, (512) 834-4091.

Filed: January 15, 1985, 4:22 p.m.
TRD-850459, 850460

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Advisory Council for Technical-Vocational Education in Texas

Thursday, February 7, 1985, 2 p.m. The Advisory Council for Technical-Vocational Education in Texas will meet in the Anderson Room, Holiday Inn Northwest Plaza, 8901 Business Park Drive, Austin. According to the agenda summary, the council will hear a report on apprenticeship and training by Dan Lowe, coordinator of apprenticeship and training, Texas Education Agency (TEA); receive a status report on vocational education issues/actions by Dr. Paul Lindsey, associate commissioner for occupational education and technology, TEA; discuss the presentation of the council's annual report to the State Board of Education; review plans for the symposium on economic development and vocational education to be held on February 8, 1985; and discuss the council's transition from 24 members to 13 members.

Contact: Val Blaschke, P.O. Box 1886, Austin, Texas 78767, (512) 475-2046.

Filed: January 16, 1985, 1:41 p.m.
TRD-850485

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Texas Southern University

Friday, February 1, 1985. Committees of Texas Southern University will meet in Room 117, Hannah Hall, 3100 Cleburne Avenue, Houston. Times, committees, and agendas follow.

8:30 a.m. The Development Committee will receive reports from the administration on university fund raising and hear a status report on educational and developmental gifts and grants.

9 a.m. The Building and Grounds Committee will consider approval of payments for construction contracts; approval/ratification of building contracts; construction change orders; improvements to land; and sale of improvements; and hear a report on central plant expansion and renovation and a progress report on ongoing construction projects.

10:15 a.m. The Finance Committee will consider monthly fiscal reports on university operations; approve short-term university investments; and review university budgets.

11 a.m. The Personnel and Academic Affairs Committee will receive enrollment and curricula data from the administration and consider academic program changes; appointments to the faculty and staff; request for leaves from faculty members; and the cancellation of appointments and changes in status of certain faculty personnel.

11:30 a.m. The Student Affairs Committee will receive reports from the administration on student organization and activities and hear dormitory renovation progress and status reports.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 17, 1985, 9:23 a.m.
TRD-850510-850514

Friday, February 1, 1985, 1:30 p.m. The Board of Regents of Texas Southern University will meet in Boardroom 203, Sterling Student Life Center, 3100 Cleburne Avenue, Houston. According to the agenda, the board will receive and consider reports from the Finance, Building and Grounds, Personnel and Academic Affairs, and Development Standing Committees and the president and consider student affairs and development. The board will also meet in executive session.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 17, 1985, 9:23 a.m.
TRD-850515

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Texas State Technical Institute

Sunday and Monday, January 27 and 28, 1985, 8:45 and 9:30 a.m. respectively. Board Policy Committees of Texas State Technical Institute (TSTI) will meet at the

McAllen Extension Center, McAllen, on Sunday; and the Board of Regents of TSTI will meet at TSTI-Harlingen on Monday. According to the agenda, the committees and board will consider approval of the minutes; campus reports; classes meeting with less than 10 students; a resolution concerning allied health programs in the Rio Grande Valley; acceptance of the Chemical/Instrumentation Building at TSTI-Harlingen; requests for a budget change; an addendum to a ground lease with Electrospace Systems, Inc., at TSTI-Waco; an agreement with Ted Hernandez, doing business as TSTI-hair stylist, for furnishing and operating a style shop in the Student Activities Center at TSTI-Waco; a lease agreement with Forsey Manufacturing, Inc., TSTI-Amarillo; a lease agreement with ATCT, TSTI-Amarillo; a lease agreement with All That Brass and More, TSTI-Amarillo; an agreement for management and operation of a food service facility, TSTI-Amarillo; the operating budget for Abilene extension programs for fiscal year 1985; policies relating to human resources; revisions to the *TSTI Compensation Manual*; ratification of action taken by the Executive Committee regarding an appeal, TSTI-Sweetwater; and other business.

Contact: Theodore A. Talbot, Texas State Technical Institute, Waco, Texas 76705, (817) 799-3611, ext. 3909.

Filed: January 15, 1985, 1:57 p.m.
TRD-850446

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University Interscholastic League

Monday, January 31, 1985, 9 a.m. The Legislative Study Committee of the University Interscholastic League will meet in Room 2.110, Joe C. Thompson Conference Center, University of Texas campus, 26th and Red River Streets, Austin. According to the agenda summary, the committee will formulate an alternate proposal to the 8/20 hour State Board of Education regulation and study regional and state tournament formats, the feasibility of allowing foreign exchange students to participate in varsity level activities, the feasibility of combining team and individual tennis competition, and the amateur rule.

Contact: Bailey Marshall, P.O. Box 8028, Austin, Texas 78712, (512) 471-5883.

Filed: January 15, 1985, 11:30 a.m.
TRD-850433

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Texas Water Commission

The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, rooms, and agendas follow.

Friday, January 25, 1985, 10 a.m. In Room 124A, the commission will conduct a hearing on a contest to the preliminary determination of water right claims in the Upper Sabine River segment, Sabine River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 15, 1985, 2:07 p.m.
TRD-850447

Monday, January 28, 1985, 10 a.m. In Room 124A, the commission will conduct a hearing on contests to the preliminary determination of water right claims in the Lower Sabine River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 15, 1985, 2:08 p.m.
TRD-850448

Tuesday, January 29, 1985, 10 a.m. In Room 124A, the commission will conduct hearings on contests to the preliminary determination of water right claims in the Brazos II segment of the Brazos River Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 15, 1985, 2:08 p.m.
TRD-850449

Wednesday, January 30, 1985, 10 a.m. In Room 152, the commission will conduct hearings on contests to the preliminary determination of water right claims in the Lower Neches and Angelina River segment.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 15, 1985, 2:08 p.m.
TRD-850450

Wednesday and Thursday, February 6 and 7, 1985, 10 a.m. daily. In Room 124A, the commission will conduct hearings on contests to the preliminary determination of water right claims in the Lower Trinity River segment, Trinity River Basin, and the western portion of the Neches-Trinity Coastal Basin.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

Filed: January 15, 1985, 10:30 a.m.
TRD-850428

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Regional Agencies

Meetings Filed January 15

The Region XIII Education Service Center, Board of Directors, met in Room 200, 7703 North Lamar Boulevard, Austin, on January 21, 1985, at noon. Information may be obtained from Dr. Joe Parks, 7703 North Lamar Boulevard, Austin, Texas 78752, (512) 458-9131.

The Houston-Galveston Area Council, Natural Resources Advisory Committee, will meet in the conference room, fourth floor, 3555 Timmons, Houston, on February 14, 1985, at 3 p.m. Information may be obtained from Rowena Ballas, 3555 Timmons, Houston, Texas 77227, (713) 627-3000.

The Middle Rio Grande Development Council—Area Agency on Aging, Area Advisory Council on Aging, will meet at the Uvalde Fairgrounds, Uvalde, on January 22, 1985, at 10 a.m. Information may be obtained from Estella Hernandez, P.O. Box 702, Carrizo Springs, Texas 78834, (512) 876-3533.

The Tyler County Tax Appraisal District, Board of Review, met at 103 Pecan, Woodville, on January 21, 1985, at 1:30 p.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

The West Texas Council of Governments, Board of Directors, met in emergency session in the conference room, eighth floor, Two Civic Center Plaza, El Paso, on January 18, 1985, at 9:30 a.m., MST. Information may be obtained from Cecile C. Gamez, Two Civic Center Plaza, El Paso, Texas 79999, (915) 541-4689.

TRD-850434

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Meetings Filed January 16

The Austin-Travis County Mental Health and Mental Retardation Center, Finance and Control Committee, met in emergency session in the boardroom, 1430 Collier Street, Austin, on January 17, 1985, at noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, ext. 40.

The Alamo Area Council of Governments, Executive Committee, will meet in Suite 420, Three Americas Building, 118 Broad-

way, San Antonio, on January 23, 1985, at noon. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201.

The Comal County Appraisal District, Board of Directors, met at 644 North Loop 337, New Braunfels, on January 21, 1985, at 7:30 p.m. Information may be obtained from Glenn L. Brucks, P.O. Box 1222, New Braunfels, Texas 78130, (512) 625-8597.

The Region IX Education Service Center, Board of Directors, will meet in the boardroom, 301 Loop 11, Wichita Falls, on January 24, 1985, at 2 p.m. Information may be obtained from Dr. Jim O. Rogers, 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928.

The Golden Crescent Regional Planning Commission, Board of Directors, will meet in the town hall, First Victoria National Bank, 101 South Main, Victoria, on January 30, 1985, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

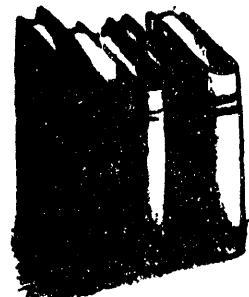
The Central Appraisal District of Johnson County, Board of Directors, will meet at 109 North Main, Cleburne, on January 23, 1985, at 7:30 p.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986.

The Martin County Appraisal District, Board of Directors, will meet at 708 West St. Anna Street, Stanton, on January 24, 1985, at 7 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823.

The Mental Health and Mental Retardation Regional Center of East Texas, Board of Trustees, will meet in the boardroom, 2323 West Front Street, Tyler, on January 24, 1985, at 4 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

TRD-850484

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In Addition

The 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 Department of Corrections Consultant Proposal Request

This request for consulting services is filed under Texas Civil Statutes, Article 6252-11c.

As directed under Senate Concurrent Resolution 8, 69th Legislature, 1985, the Texas Department of Corrections (TDC) invites offers from consultants interested in developing a long-term plan to project the facility and operational needs for the TDC through the 1996-1997 state fiscal biennium.

Such comprehensive analysis shall include assessment of the following issues:

- (1) alternatives for meeting the needs indicated by the study;
- (2) the impact of existing court orders and court-approved agreements relating to the TDC;
- (3) recommended standards of reputable, recognized state and national correctional organizations and systems;
- (4) existing state policies which have been mandated by legislation encompassing the TDC in particular and the statewide criminal justice system as a whole;
- (5) implications indicating modification of current criminal justice agency functions, sentencing practices and procedures, and related appropriation patterns.

In addition to a thorough analysis of the previously listed components, the proposal shall include clearly delineated methodology and procedures indicating how this information will be generated. The TDC intends to meet the legislative directive for an expeditious and comprehensive study through enactment of a secondary phase of the department's current consultant contract with HDR, Inc., unless a superior alternative proposal is submitted to the TDC for consideration.

The contact for private consultants who wish to make an offer is Laurie Shanblum, administrative liaison, Texas Department of Corrections. Detail of the proposed scope of the project is available from the TDC upon request.

The closing date for receipt of offers of consulting services is 5 p.m. on February 22, 1985.

The TDC will provide details of the proposed scope of the project to interested parties upon request. The department will review proposals presented by interested consultants and award the contract on the basis of the consulting proposal and the consultant's qualifications and the reasonableness of the proposed fees.

Issued in Huntsville, Texas, on January 16, 1985

TRD-850479 Leonard W. Peck, Jr.
Legal Counsel
Texas Department of Corrections

Filed: January 16, 1985

For further information, please call (409) 295-8371.

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Texas Department of Health Intent to Revoke a Certificate of Registration

The Bureau of Radiation Control, Texas Department of Health, is seeking the revocation of Certificate of Registration 8-05475, issued to IMCO Services, for the following reasons.

(1) In accordance with the *Texas Regulations for the Control of Radiation* (TRCR) 42.6, Certificate of Registration 8-05475 expired July 31, 1984. The registrant has not submitted to the agency a request to renew the certificate of registration.

(2) The agency determined that the registrant is no longer located at 2400 West Loop South, Houston, Texas 77027. The registrant has not notified the agency of a change of address, and no forwarding address is available.

All attempts by the agency to contact the registrant have been unsuccessful. Therefore, the Texas Department of Health, Bureau of Radiation Control, recommends that the certificate of registration issued to IMCO Services be revoked immediately.

In accordance with TRCR 13.8, this notice affords the opportunity for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received within 30 days from the date of publication of this notice to be valid. Such written request must be filed with David K. Lacker, Director, Radiation Control Program, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be filed on time, the certificate of registration will be revoked 14 days after the end of the 30-day period of notice.

Issued in Austin, Texas, on January 11, 1985.

TRD-850431 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: January 15, 1985

For further information, please call (512) 458-7236.

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Suspension and Cease and Desist Order

The Texas Department of Health, Bureau of Radiation Control, has ordered that Certificate of Registration 11-09954 be suspended. The agency has further ordered that Sam L. Mallett, D.D.S., holder of Certificate of Registration 11-09954, cease and desist use of the x-ray machine registered to the registrant or any other x-ray machine at the registered address. Notice of contemplation

of these actions, along with a complaint, was given to the registrant and notice was published in the December 7, 1984, issue of the *Texas Register* (9 TexReg 6203). No request for a hearing was made.

Issued in Austin, Texas, on January 11, 1985.

TRD-850432 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: January 15, 1985

For further information, please call (512) 459-7236.

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Texas Health Facilities

Commission

Applications Accepted for Amendment, Declaratory Ruling, Notices of Intent, and Petition for Reissuance of Certificate of Need

Notice is given by the Texas Health Facilities Commission of applications accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research project; NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party or interested person to any of the previously stated applications, that person must file a proper request to become a party or interested person to the application within 10 days after the date of this publication of notice. If the 10th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. A request to become a party or interested person should be mailed to the chair of the commission at P.O. Box 50049, Austin, Texas 78763, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party or interested person.

The contents and form of a request to become a party or interested person to any of these applications must meet the criteria set out in 25 TAC §515.9. Failure of a party or interested person to supply the necessary information in the correct form may result in a defective request to become a party or interested person.

Dallas County Hospital District for Parkland
Memorial Hospital Chronic Dialysis Center,
Dallas

AH81-0710-010A(122784)

CN/AMD—Request for an extension of the completion deadline from February 28, 1985, to July 1, 1985, and an increase in the project cost from \$453,865 to \$538,274 in Certificate of Need AH81-0710-010, as amended by AH81-0710-010A(072382) and AH81-0710-010A(091683), which authorized

the certificate holder to establish a 14-station dialysis facility in approximately 6,820 square feet on the fifth floor of the outpatient clinic building authorized by Certificate of Need AH80-0923-001.

The Austin Diagnostic Clinic Association, Austin
AO85-0108-010

DR—Request for a declaratory ruling that a certificate of need is not required for The Austin Diagnostic Clinic Association to obtain Medicare certification for its Endoscopic Services Department as an ambulatory surgical center. The total project cost is \$2,000. The applicant has offered endoscopic procedures continuously since 1965 in its facility at 801 West 34th Street, Austin.

Dallas/Fort Worth Medical Center, a Texas
nonprofit corporation, Grand Prairie
AH85-0110-017

NIEH—Request for a declaratory ruling that a certificate of need is not required for Dallas/Fort Worth Medical Center, a Texas nonprofit corporation, to acquire by purchase Dallas/Fort Worth Medical Center—Grand Prairie (Southwest), an existing 80-bed alcohol rehabilitation facility located in Grand Prairie, from Grand Prairie Hospital Authority.

Dallas/Fort Worth Medical Center, a Texas
nonprofit corporation, Grand Prairie
AH85-0219-809

NIEH—Request for a declaratory ruling that a certificate of need is not required for Dallas/Fort Worth Medical Center, a Texas nonprofit corporation, to acquire by purchase Dallas/Fort Worth Medical Center—Grand Prairie, an existing 297-bed general acute care hospital located in Grand Prairie, from Grand Prairie Hospital Authority.

Air Force Village Foundation, Inc., for Air Force
Village Health Care Center, San Antonio
AN85-0109-013

DR—Request for a declaratory ruling that a certificate of need is not required for Air Force Village Foundation, Inc., to admit prospective Air Force Village residents into the nursing home directly from their waiting list rather than requiring them first to enter an apartment unit before gaining nursing home admission. The applicant was issued Certificate of Need AH79-0731-011 on January 31, 1980, which authorized the construction of a 68-bed nursing home to serve only residents of Air Force Village.

Issued in Austin, Texas, on January 16, 1985.

TRD-850478 John R. Neel
General Counsel
Texas Health Facilities
Commission

Filed: January 16, 1985

For further information, please call (512) 475-6940.

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Texas Department of Human Resources Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Resources (DHR) is requesting proposals for consultant services.

Description of Services. The Nutrition Education and Training (NET) Program is requesting proposals for the development of a nutrition education project. A contract will be awarded to one school district in Texas to develop a plan to train lead teachers to train other teachers in the state-mandated essential elements for nutrition in kindergarten through grade three. Funding provided through the NET program will require the contractor to design a training curriculum, train teachers to present the curriculum, conduct a training pilot, and evaluate the results of training.

Limitations. Texas school districts with a 1983-1984 total enrollment greater than 50,000 will be eligible to submit a proposal for this project.

Contract Terms. The contract will begin March 1, 1985, and end September 30, 1986. The total amount of the contract will not exceed \$10,000.

Procedure for Selecting Contractor. Competitive negotiation procedures will be used in awarding this contract. A panel composed of DHR staff and NET advisory council members will evaluate all proposals submitted. Final selection will be based on degree to which the proposal meets guidelines specified in the request for proposal, qualifications and related experience of project directors, budget, and timeline of proposal activities.

Contact Person. To receive a detailed copy of the request for proposal contact Alexa Sparkman, NET Program Coordinator—Mail Code 520-W, Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769, (512) 450-3382.

Closing Date. All proposals must be received by DHR by 5 p.m. on Wednesday, February 20, 1985.

Issued in Austin, Texas, on January 16, 1985.

TRD-850463 Marlin W. Johnston
Commissioner
Texas Department of Human
Resources

Filed: January 16, 1985
For further information, please call (512) 450-3766.

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Availability of Intended Use Reports

The Texas Department of Human Resources (DHR) has prepared the intended use report for the Title XX social services block grant and the low income home energy assistance block grant for program year 1985. The report describes department services funded through these federal sources and includes a distribution of funds section which provides financial information on the allocation of funds to all department social services.

Public comment was sought in the development of the intended use report. In February 1984, six public hearings were held across the state. These hearings were held to receive suggestions from the public early in the process of preparing the department's 1985 operating plan and legislative appropriations request (LAR) for fiscal year 1986-1987. More than 150 people, speaking as individuals or representing organizations, offered testimony. Testimony was received on all department programs, not just block grant programs. Members of citizen advisory com-

mittees conducted the hearings. Citizen advisory committees considered the testimony from the hearings and made recommendations to the department. Department staff considered the public comments in preparing a proposed 1985 operating plan and 1986-1987 LAR. On May 1, 1984, the Texas Board of Human Resources met to review the proposed plans, including the use of block grant funds. Forty people offered testimony on department programs at the board meeting. Also on May 1, 1984, the proposed intended use report was made available to the public for review and comment. The department received 13 written comments on the proposed report. These comments were considered as department staff presented a revised 1985 operating plan and LAR to the board on June 28, 1984. The board approved these proposals.

Summary of Public Comments on the Intended Use Report.

Services to Families and Children

Child protective services—Some commenters supported increased staff levels for protective services for children. Commenters suggested that current funding levels are not adequate to serve all children who need services, and that preventative and supportive services need to be expanded.

Family violence—Several commenters recommended that the department increase funds for this service and assign a high priority to the service. Services in rural areas need expansion. Also, commenters suggested improvements in the narrative description of the program in the report.

Day care—Several commenters supported expansion in this program.

Family planning—Several commenters suggested increased funding for this service. One commenter recommended that teenagers should be eligible for family planning without regard to income.

Employment services—Some commenters supported additional funding. One commenter recommended increased emphasis in job training.

Licensing—Several commenters suggested additional staff in this program, especially in the area of monitoring of registered family homes.

Community Care for the Aged and Disabled

Several commenters supported:

- (1) expansion of adult protective services;
- (2) the need for shared attendant care for disabled adults;
- (3) funding increases for adult foster care; and
- (4) increase in staff for community care services.

General

Several commenters recommended that the department increase the involvement of local governments in department planning.

One commenter suggested that the department take steps to reduce lapsed Title XX funds and to reduce administrative expenses.

Response to Comments.

Changes were made in the narrative descriptions of several services, to clarify and accurately describe program activities.

The "Intended Distribution" section in the final report reflects some adjustments which the Board of Human Resources approved in the June 28, 1984, board meeting. In the final report, the relative distribution of feder-

al block grant funds to each program remains substantially unchanged from the proposed report.

The statement of priorities was deleted from the final report. Decisions regarding distribution of funds to the various programs continues to be a function of legislative mandates, appropriations, assessment of need, the department's strategic plan, and input from advisory committees and the public.

Distribution of the Report. Free copies of the 1985 intended use report are available to the public. To obtain a copy, write to Joyce Salm, Special Services Division 427-W, Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769.

Issued in Austin, Texas, on January 16, 1985.

TRD-850464 Marlin W. Johnston
 Commissioner
 Texas Department of Human
 Resources

Filed: January 16, 1985
For further information, please call (512) 450-3786.



Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 7-11, 1985.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-2678.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of January 7-11, 1985

Storm Development, Inc., Austin; sewage treatment plant; on Dessau Road, approximately 1.4 miles north of the intersection with Yager Road in Travis County; 12971-01; new permit

Corinthian Point Municipal Utility District 2, Willis; wastewater treatment plant; adjacent to the east side of Lake Conroe, approximately 9,000 feet north of FM Road 1097 in Montgomery County; 11285-01; renewal

The City of Timpson; wastewater treatment plant; approximately ½ mile southeast of the intersection of State Highway 87 with U.S. Highway 59 and U.S. Highway 84, and ¼ mile east of State Highway 87 in Shelby County; 10614-01; renewal

Harris County Municipal Utility Districts 61-65 and West Harris County Municipal Utility District 2 and District 5, doing business as Williamsburg Regional Sewage Authority, Houston; wastewater treatment plant; approximately 5,000 feet west and 5,600 feet north of the intersection of IH 10 and Mason Road, and approximately 2,000 feet west and 400 feet south of the intersection of Elrod Road and Franz Road in Harris County; 11598-01, renewal

Valley Municipal Utility District 2, Rio Bravo Sewage Treatment Plant, Brownsville; wastewater treatment plant; approximately 5½ miles northwest of the center of the City of Brownsville and approximately 5,500 feet west of the community of Villa Nueva in Cameron County; 11348-02; new permit

Brushy Creek Water Control and Improvement District 1, Round Rock; regional wastewater treatment plant; on the south side of U.S. Highway 79 at the confluence of Brushy Creek and Chandler Creek, approximately four miles east of Round Rock in Williamson County; 13057-01; new permit

H.C.M.U.D., Inc., League City; wastewater treatment plant; immediately west of Fairbanks-North Houston Road and approximately 400 feet north of Breen Road in Harris County; 12906-01; amendment

Texas Parks and Wildlife Department, Abilene; sewage treatment plant; in Abilene State Park, approximately ½ mile east of FM Road 89 and four miles southwest of the intersection of FM Road 89 and FM Road 613 in Taylor County; 11234-01; renewal

Port Mansfield Public Utility District, Raymondville; wastewater treatment plant; adjacent to Four Mile Slough, approximately 2,770 feet east of the southwest corner of the Port Mansfield district and east of FM Road 479 in Willacy County; 10682-03; renewal

The City of Byers; wastewater treatment plant; approximately 4,000 feet northwest of the intersection of FM Road 171 and State Highway 79, and approximately 400 feet east of Byers City Lake in Byers, Clay County; 10890-01; renewal

Wharton County Water Control and Improvement District 2, East Bernard; wastewater treatment plant; approximately one mile east of the intersection of U.S. Highway 90A and State Highway 60 in Wharton County; 10821-01; renewal

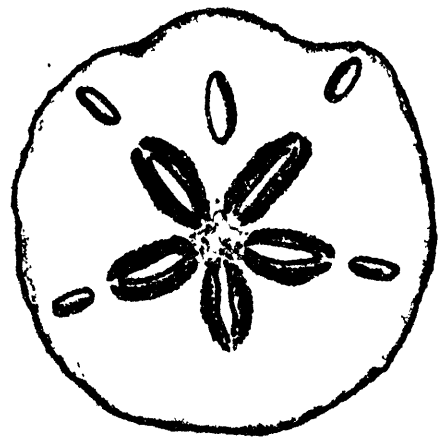
Texas Parks and Wildlife Department, Mission; wastewater treatment plant; approximately three miles southwest of the City of Mission adjacent to Park Loop 43 in Hidalgo County; 11098-01; renewal

City of Amarillo; wastewater treatment plant; approximately four miles east-southeast of the intersection of State Highway Spur 335 (Hollywood Road) and FM Road 1541 (Washington Street) in Randall County; 10392-03; amendment

Issued in Austin, Texas, on January 11, 1985.

TRD-850390 Mary Ann Hefner
 Chief Clerk
 Texas Water Commission

Filed: January 14, 1985
For further information, please call (512) 475-4514.



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