

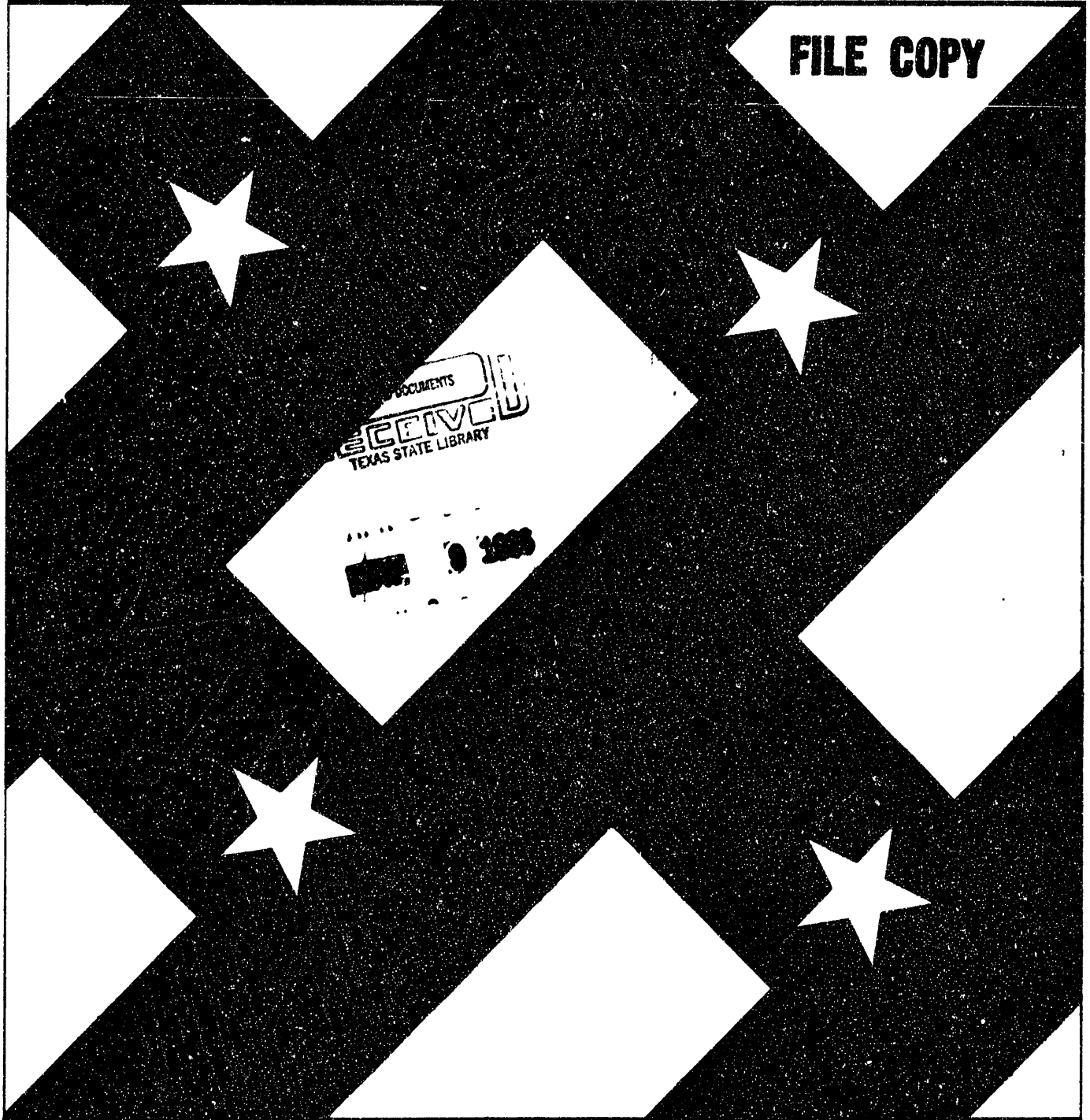
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Texas Register

Volume 11, Number 35, May 9, 1986

Pages 2129-2204



Highlights

The Texas Animal Health Commission adopts an amendment to Texas Bovine Brucellosis Regulations. Effective date - May 2 . page 2136

The State Purchasing and General Services Commission propose new sections concerning parking and traffic enforcement, forfeiture of parking

privilege, and removal and impoundment. Earliest possible date of adoption - May 2 ... page 2137

The State Securities Board proposes amendments concerning real estate programs. Earliest possible date of adoption - June 9 ... page 2138

**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 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

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Information Available: The 11 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- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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
- The Legislature—bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 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: "11 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 11 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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Myra A. McDaniel
Secretary of State

Director

Dan Procter

Documents Section Coordinator

Cynthia Cooke

Document Editors

Molly Gardner

Sabra Noyes

Jane Orcutt

Document Filing

Lainie Crease

Denise Roberts

Production Editors

Jody Allen

Lisa Bauer

Hollis Glasser

Typographers

Dawn VanCleave

Glynn Fluitt

Circulation Section Coordinator

Dee Wright

Circulation Assistant

Kristine Hopkins Mohajer

TAC Editor

W. Craig Howell

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The Governor

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

Appointments Made April 23

North Central Texas Region Community Development Grant Review Committee

For terms to expire January 1, 1988:

John Briggs
Mayor
City of Terrell
P.O. Box 310
Terrell, Texas 75160

George Robert Crump
Somervell County Judge
Somervell County Courthouse
Glen Rose, Texas 76043

Don Hughes
Mayor
City of Wylie
P.O. Box 29
Wylie, Texas 75098

Barbara Jourdan
Mayor Pro-Tem
209 South Washington
Kaufman, Texas 75142

Doris Hines Lawson
Corsicana City Commissioner
P.O. Box 626
Corsicana, Texas 75110

Jim C. Ledbetter
Mayor
City of McKinney
P.O. Box 517
McKinney, Texas 75069

J. C. Poindexter
Mayor
City of Murphy
205 North Murphy Road
Plano, Texas 75074

Patrick Sherman
Mayor Pro-Tem
P.O. Box 626
Corsicana, Texas 75110.

Issued in Austin, Texas, on April 23, 1988.

TRD-8804049

Mark White
Governor of Texas

★ ★ ★

Appointments Made April 24

East Texas Region Community Development Block Grant Review Committee

To be chairman, for a term to continue at
the pleasure of this governor:

Larry McCasland
Camp County Judge
Camp County Courthouse
Pittsburg, Texas 75686

Texas Surplus Property Agency

For a term to expire March 19, 1987:

Bruce Wood
Terrell ISD
212 West High Street
Terrell, Texas 75160

Mr. Wood is replacing Jess M. Irwin, Jr.,
of Austin, who resigned.

Texas World Trade Council

For terms to expire February 1, 1987:

Robert C. Kelly
6101 West View Drive
Houston, Texas 77055

William Moore
4720 Northaven Road
Dallas, Texas 75229

Mr. Kelly and Mr. Moore are being appointed
pursuant to Senate Bill 1409, 69th Legisla-
ture, 1985.

Issued in Austin, Texas, on April 24, 1988.

TRD-8804049

Mark White
Governor of Texas

★ ★ ★

Appointments Made April 29

Brazos River Harbor Navigation District of Brazoria County

To be branch pilots, for terms to expire Feb-
ruary 8, 1990:

Captain John Burns
1583 West Eighth Street
Freeport, Texas 77541

Captain Kenneth Gonzales
P.O. Box 1024
Freeport, Texas 77541

Captain Mark E. Hicks
52 Candlewood Court
Lake Jackson, Texas 77566

Captain Alvin A. Miller
P.O. Box 923
Freeport, Texas 77541

Captain Burns, Captain Gonzales, Captain
Hicks, and Captain Miller are being reap-
pointed.

Galveston Bar and the Houston Ship Channel

To be branch pilots, for terms to expire Feb-
ruary 9, 1990:

Captain Richard C. Schultheis
3010 Sea Pines Place
League City, Texas 77573

Captain David A. Smith
15719 Fathom
Houston, Texas 77062

Captain Monte B. Warren
4304 Masters Drive
League City, Texas 77573

Captain Schultheis, Captain Smith, and
Captain Warren are being reappointed.

Issued in Austin, Texas, on April 29, 1988.

TRD-8804049

Mark White
Governor of Texas

★ ★ ★

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 4. AGRICULTURE Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis

★4 TAC §35.5

The Texas Animal Health Commission adopts on an emergency basis an amendment to §35.5 of the Texas Bovine Brucellosis Regulations.

The amendment is adopted on an emergency basis to remove from the regulation the requirement that females be vaccinated for change of ownership within the Class C area. The S branding requirement of nonvaccinates over 12 months of age selling through markets is also removed with this action. An undue hardship is being experienced by livestock markets as well as producers in marketing cattle affected by this regulation. The problems were difficulty in aging heifers requiring S branding; interference with the market in aging and checking heifers for vaccination status; and negative economic impact on the producer and the market in marketing these heifers. This action was taken as an emergency to correct these problems.

The amended section allows heifers in the Class C area to change ownership without having to be vaccinated and without having to be S branded if they are not vaccinated.

The amendment is adopted on an emergency basis under the Texas Agricultural Code, Texas Civil Statutes, Chapters 161 and 163, which grants rule-making authority and sets forth the duty of this agency to protect domestic animals in this state from disease.

§35.5. Class C Area.

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

(d) Change of ownership within the Class C area.

[(1) Vaccination.

[(A) All female cattle born after January 1, 1984, and between 4-12 months of age which are acquired and used in grazing, breeding, dairying operations, or confinement in a dry lot not under quarantine must be officially vaccinated.

[(B) Females born after January 1, 1984, which have not been officially vaccinated and are over 12 months of age may change ownership only after being spayed; or

[(i) consigned direct to a slaughter establishment; or

[(ii) consigned direct to a quarantined feedlot or quarantined pasture; or

[(iii) consigned to a livestock market to be spayed or S branded prior to

sale and, if S branded, sold direct to slaughter or quarantined feedlot accompanied by an S permit.

[(2) Testing. In addition to complying with the vaccination requirements in paragraph (1) of this subsection,] All nonexempt cattle over 18 months of age (age determined by the loss of the central pair of temporary incisors) which are changing ownership within the Class C area shall originate directly from:

(A) a certified free herd; or

(B) shall be tested negative within 30 days prior to sale; or

(C) consigned to a livestock market and tested negative unless S branded prior to sale; or

(D) consigned to a slaughter establishment for testing or blood collection; or

(E) consigned to a quarantined feedlot or quarantined pasture.

Issued in Austin, Texas, on May 2, 1986.

TRD-8604177

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: May 2, 1986

Expiration date: August 30, 1986

For further information, please call
(512) 479-6697.

★ ★ ★



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 1.

ADMINISTRATION

Part V. State Purchasing and General Services Commission

Chapter 111. Executive Administration Division

Parking

★1 TAC §§111.41-111.43

The State Purchasing and General Services Commission proposes the repeal of §§111.41-111.43, concerning statutory offenses, violation of rules, and general parking and traffic violations. The repeals accommodate new sections that provide greater clarity to the public as to what constitutes a parking or traffic violation in the Capitol complex area, which may be ticketed by commission security officers; establish the amount of a fine for a parking or traffic violation; establish the bases for forfeiture of a state parking privilege and the procedures for such forfeiture; and establish the circumstances under which an illegally parked vehicle may be removed and impounded.

John R. Neel, general counsel, has determined that for the first five-year period the proposed repeals will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Neel also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to allow the adoption of new rules that provide greater clarity to the public regarding parking and traffic violations in the Capitol complex area, forfeiture of state parking permits, and removal and impounding of illegally parked vehicles. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047.

The repeals are proposed under Texas Civil Statutes, Article 601b, §4.12, which provide the State Purchasing and General Services Commission with the authority to promulgate rules and regulations necessary to regulate parking and traffic in the Capitol complex area.

§111.41. *Offenses Under Texas Civil Statutes, Article 601b, §4.12.*

§111.42. *Violation of Rules.*

§111.43. *Parking and Traffic Violations Generally.*

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 May 2, 1986.

TRD-8604116 John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption.

June 9, 1986
For further information, please call
(512) 463-3446.

★ ★ ★

★1 TAC §§111.41-111.43

The State Purchasing and General Services Commission proposes new §§111.41-111.43, concerning parking and traffic enforcement, forfeiture of parking privilege, and removal and impoundment. The new sections specify those actions that will constitute a parking or traffic offense on state property in the Capitol complex area that may be ticketed by commission security officers, establish the amount of the fine for a parking or traffic violation; establish the bases and procedures for forfeiture of a state parking privilege; and establish the circumstances under which an illegally parked vehicle may be removed and impounded. If adopted, the sections should provide public and state employees holding state parking permits, greater clarity about traffic rules and regulations in the Capitol complex and should promote a more efficient and equitable utilization of the complex's limited parking resources.

John R. Neel, general counsel, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government is an estimated additional cost of \$15,000 in 1987, \$16,000 in 1988, \$17,000 in 1989, \$18,000 in 1990, and \$19,000 in 1991. There is an estimated increase in revenue of \$100,000 for each year in 1987-1991. There is no effect on local government or small businesses.

Mr. Neel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater clarity to the public and state employees regarding the traffic rules and regulations in the Capitol complex and more efficient and equitable utilization of the complex's limited parking resources. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to John R. Neel, General Counsel, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047.

The new sections are proposed under Texas Civil Statutes, Article 601b, §4.12, which provide the State Purchasing and General Services Commission with the authority to promulgate rules and regulations necessary to regulate parking and traffic in the Capitol complex area.

§111.41. *Parking and Traffic Enforcement.*

(a) Jurisdiction. Pursuant to the provisions and authority of Texas Civil Statutes, Article 601b, §4.12, security officers of the commission are responsible for enforcing that statute, and parking rules, §§111.31-111.46 of this title (relating to Parking), and are expressly authorized to issue citations for parking and traffic violations on state property:

(1) in the Capitol complex (the area in the City of Austin bounded on the south by 10th Street, on the north by Martin Luther King Boulevard, on the west by Lavaca Street, and on the east by Trinity Street); and

(2) on other state-owned property

under the charge and control of the commission whether or not located in the City of Austin, as further described in §111.31 of this title (relating to General).

(b) Citations. To carry out this responsibility and authorization, the security officers of the commission may issue commission citations or municipal citations for any parking or traffic violation occurring within the jurisdiction of the commission.

(1) A commission citation is an administrative process of the security section of the commission.

(2) A municipal citation, although issued by commission security officers, constitutes a summons to appear before a municipal or justice court that also has jurisdiction of the violation.

(c) Parking violations and fines. The following shall constitute parking violations for which the penalty is a \$10 fine, pursuant to the provisions of Rider 26, Article I-167, Chapter 980, 69th Legislature, 1985:

(1) overtime parking, i.e., parking in a time zone for a period of time in excess of the time limit marked for that zone;

(2) moving a barricade or parking within any barricaded area;

(3) parking on a sidewalk, walk area, curb, or grass;

(4) parking in an area marked "no parking";

(5) parking within 15 feet of a fire plug or within a fire zone;

(6) parking on or over a stall line;

(7) parking in a loading zone except while loading or unloading;

(8) parallel parking over 18 inches from the curb or parking stop, measured from any part of the car body facing the curb or parking stop;

(9) angle or straight-in parking over 18 inches from the vehicle front bumper to the curb or parking stop, or with the rear of the vehicle facing the curb or parking stop;

(10) parking in a space or facility other than the one assigned, unless authorization has been obtained as provided in §111.37 of this title (relating to Short Term Parking Authorizations) or §111.38 of this title (relating to Sublease and Utilization);

(11) parking in a space or facility which is designated for permit parking only without a valid permit, unless authorization has been obtained as provided in §111.37 of this title (relating to Short Term Parking Authorization) or §111.38 of this title (relating to Sublease and Utilization);

(12) parking in a space other than a space marked or designated for parking;

(13) double parking;

(14) blocking or impeding a crosswalk, driveway, or alley;

(15) displaying more than one parking permit, even if one is not currently valid; or

(16) overtime parking of a vehicle with a valid permit or assignment for a state

facility in or near the Capitol complex on a city street within or near the Capitol complex during normal business hours, i.e., generally, 8 a.m. to 5 p.m., Monday-Friday. (This practice is deemed to be a violation within the jurisdiction of commission security officers as necessary to regulate maximum utilization of state-owned parking and to administer an efficient parking program.)

(d) Other traffic violations and fines. The following shall constitute other traffic violations for which the penalty shall be a fine not to exceed \$200, in accordance with applicable law;

speeding, i.e., operating a motor vehicle late property in excess of 15 miles per hour; and

(2) other violations of the Texas Motor Vehicle Code not otherwise specified in this section.

(e) General policy concerning citations. Although commission security officers may issue a commission citation or a municipal citation for any parking or traffic violation, generally they will issue municipal citations:

(1) for violations specified in subsection (d) of this section;

(2) for any violation by a person whose parking privileges granted under §§111.31-111.46 (relating to Parking) have been forfeited under the provisions of §111.42 of this title (relating to Forfeiture of Parking Privileges); or

(3) for any violation for which a commission citation was issued after reasonable efforts to collect the fine have failed.

(f) Payments of commission citations. Any person who is issued a commission citation shall pay the fine, in person or by mail, to the accounting office of the State Purchasing and General Services Commission no later than the 10th calendar day after the citation was issued. Failure to pay timely shall result in the assessment of a \$2.00 late charge to the fine, and one or more of the following actions:

(1) if the unpaid fine and late fee are charged to a person who has a parking privilege, forfeiture will be initiated under §111.42 of this title (relating to Forfeiture of Parking Privileged);

(2) if the unpaid fine and late fee are charged to a person who does not have a parking privilege, the person shall be given written notice that the vehicle is placed on an impoundment list and will be impounded if found on state property, under §111.43 of this title (relating to Removal and Impoundment); and

(3) a municipal citation will be issued.

§111.42. Forfeiture of Parking Privilege.

(a) Pursuant to the provisions and authority of Texas Civil Statutes, Article 601b, §4.12, a state employee's parking permit may be forfeited for any of the following reasons:

(1) failure to pay a commission citation(s) issued by a commission security of-

ficer;

(2) nonpayment of assessed parking fees;

(3) falsifying data on an application for a parking permit; or

(4) subleasing a parking assignment.

(b) Upon receipt of information which constitutes prima facie justification for forfeiting of a parking privilege, Parking and Traffic Administration shall send the employee a letter that contains the following:

(1) statement of grounds for the forfeiture;

(2) statement that the forfeiture will be effective at 5 p.m. on the 10th day following the date of the letter, unless a timely appeal is filed;

(3) specific instructions on how and when to file an appeal; and

(4) statement that the employee's vehicle shall be subject to removal and impoundment if found on state property after the forfeiture is effective.

(c) To be considered, an appeal must comply with the following:

(1) be filed no later than the fifth day following the date of the letter giving notice of forfeiture;

(2) be submitted in triplicate, addressed to the Parking Appeal Council, in care of the Security Section, SPGSC;

(3) contain specific reasons why the individual's parking privilege should not be forfeited, sufficient to allow a determination based upon the written statement;

(4) be accompanied by payment of unpaid charges that are the reason for the forfeiture, if the appeal requests a hearing rather than decision on written statements; and

(5) if hearing is requested, acknowledge that the parking privilege may be suspended temporarily pending final disposition if final disposition is not made within five days of the date of the appeal.

(d) A decision on the appeal shall be made by the appeal council within five days of receipt of the appeal. The decision of the appeal council shall be based upon the letter of forfeiture and the employee's written appeal unless a hearing is requested in which case the council will meet when and as necessary to entertain appeals. The decision shall be the final administrative disposition of the appeal; and written copies of the decision containing the reasons for it, shall be sent to the employee and the Parking and Traffic Administration Office of the commission.

(e) If the appeal council determines that forfeiture should occur, forfeiture will be effective at 5 p.m. on the fifth calendar day following the date of the decision. Any prepaid parking fees will also be forfeited. If forfeiture results from an unpaid commission citation, the security officer may issue a municipal citation. A parking privilege shall not be granted for 90 days following forfeiture unless all unpaid charges have been paid. A decision that forfeiture should

occur made following a hearing shall also result in forfeiture of any amounts paid pursuant to subsection (c)(4) of this section and the decision shall specify a maximum period of the forfeiture which in the discretion of the council may be a period of time no shorter than the temporary suspension of privileges and no longer than 90 days.

(f) A decision of the council that forfeiture should not occur will be effective to reinstate the employee's parking privilege in full; the temporary suspension, if any, will be canceled, and any amounts paid pursuant to subsection (c)(4) of this section shall be refunded.

(g) The Parking Appeal Council established by this §111.42 solely to determine appeals of parking privilege forfeitures shall be composed of three members appointed by the chief of Capitol Security Police, for a term of six consecutive months. Two ap-

pointees shall be parking coordinators of agencies other than this commission; one appointee shall be a commission security officer.

§111.43. Removal and Impoundment.

(a) When necessary to protect the public health, safety, or welfare or to promote and protect a critical state function, the chief of Capitol Security police may remove or cause to be removed any vehicle for which a commission citation is issued.

(b) The chief of Capitol Security Police may also remove or cause to be removed any nonpermitted vehicle which has received one or more commission citations which have not been timely paid.

(c) When vehicles are removed, the vehicle shall be impounded by or at the direction of the chief of Capitol Security Police. The vehicle impounded shall not be released

until all towing fees and storage fees have been paid. The commission shall not be responsible for any fees, costs, or damages resulting from vehicle removal and impoundment.

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 May 2, 1986.

TRD-6804115

John R. Neel
General Counsel
State Purchasing and
General Services
Commission

Earliest possible date of adoption:

June 9, 1986

For further information, please call
(512) 463-3446.



TITLE 7. BANKING AND SECURITIES

Part VII. State Securities

Board

Chapter 117. Real Estate

Programs

★7 TAC §§117.1-117.9

The State Securities Board proposes amendments to §§117.1-117.9, concerning administrative guidelines for registration of real estate programs. The amendments reflect provisions that were included in the recent amendments to the "North American Securities Administrators Association's Real Estate Guidelines."

Richard D. Latham, securities commissioner has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Latham also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased uniformity with other states in applying standards for the registration of real estate program offerings. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be sub-

mitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Article 581, §28-1, which provide that the board may adopt rules and regulations governing registration statements and applications and may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

§117.1. Introduction.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the con-

text clearly indicates otherwise.

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

(5) **Audited financial statements—**Financial statements (balance sheet, statement of income, statement of partners' equity, and statement of changes in financial position) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing and unqualified opinion or an opinion containing no material qualification of an independent certified public accountant or independent public accountant.

(6){(5)} **Capital contribution—**The gross amount of investment in a program by a participant, or all participants, as the case may be.

(7){(6)} **Carried interest—**An equity interest taken in a program by a person other than the promotional interest provided for in §117.4(c)(3), (e)(1), and (e)(2) of this title (relating to Fees—Compensation—Expenses), for which full consideration is not paid or to be paid.

(8){(7)} **Cash flow—**Program cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements, and replacements.

(9){(8)} **Cash available for distribution—**Cash flow less amount set aside for restoration or creation of reserves.

(10){(9)} **Competitive real estate commission—**That real estate or brokerage commission paid for the purchase or sale of property which is reasonable, customary, and competitive in light of the size, type, and location of the property.

(11){(10)} **Construction fee—**A fee for acting as general contractor to construct improvements on a program's property either initially or at a later date.

(12){(11)} **Cross-reference sheet—**A compilation of the guideline sections, referenced to the page of the prospectus, partnership agreement, or other exhibits, and justification of any deviation from the guidelines.

(13){(12)} **Development fee—**a fee for the packaging of a program's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

(14){(13)} **Financing—**The indebtedness encumbering program properties the principal amount of which is scheduled to be paid over a period of not less than 48 months, and not more than 50% of the principal amount of which is scheduled to be paid during the first 24 months. Nothing in this definition shall be construed as prohibiting a bona fide prepayment provision in the financing agreement.

(15){(14)} **Front-end fees—**Fees and expenses paid by any party for any services

rendered during the program's organizational or acquisition phase including organization and offering expenses, acquisition fees, acquisition expenses, and any other similar fees, however designated by the sponsor.

(16){(15)} **Investment in properties—**The amount of capital contributions used to make or invest in mortgage loans or the amount actually paid or allocated to the purchase, development, construction or improvement of properties acquired by the program, including the purchase of properties, working capital reserves allocable thereto (except that working capital reserves in excess of 5.0% shall not be included), and other cash payments such as interest and taxes but excluding front-end fees

(17){(16)} **Net worth—**The excess of total assets over total liabilities as determined by generally accepted accounting principles, except that if any of such assets have been depreciated, then the amount of depreciation relative to any particular asset may be added to the depreciated cost of such asset to compute total assets, provided that the amount of depreciation may be added only to the extent that the amount resulting after adding such depreciation does not exceed the fair market value of such asset.

(18){(17)} **Nonspecified property program—**A program where, at the time a securities registration is ordered effective, less than 75% of the net proceeds from the sale of program interests is allocable to the purchase, construction, or improvement of specific properties, or a program in which the proceeds from any sale or refinancing of properties may be reinvested. Reserves shall be included in the nonspecified 25%.

(19){(18)} **Organization and offering expenses—**Those expenses, incurred in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the program and all advertising expenses.

(20){(19)} **Participant—**The holder of a program interest.

(21){(20)} **Person—**Any natural person, partnership, corporation, association, or other legal entity.

(22){(21)} **Program—**A limited or general partnership, joint venture, unincorporated association, or similar organization other than a corporation formed and operated for the primary purpose of investment in and the operation of or gain from an interest in real property including such entities formed to make or invest in mortgage loans.

(23){(22)} **Program interest—**The limited partnership unit or other indicia of ownership in a program.

(24){(23)} **Program management fee—**A fee paid to the sponsor or other persons for management or administration of the program.

(25){(24)} **Property management fee—**A fee paid for day-to-day professional

property management services in connection with a program's real property projects.

(26){(25)} **Prospectus—**Shall have the meaning given to that term by §2(10) of the Securities Act of 1933, including a preliminary prospectus; provided, however, that such term as used herein shall also include an offering circular as described in Rule 256 of the General Rules and Regulations under the Securities Act of 1933, or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

(27){(26)} **Purchase price of property—**The price paid upon the purchase or sale of a particular property, including the amount of acquisition fees and all liens and mortgages on the property, but excluding points and prepaid interest.

(28){(27)} **Sponsor—**A sponsor is any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or participate in the management of a program, and any affiliate of any such person, but does not include a person whose only relation with the program is as that of an independent property manager, whose only compensation is as such. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of syndicate [program] interests.

§117.2. Requirements of Sponsors.

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

(c) Reports to securities commissioner.

Each application for registration shall contain a commitment, executed by the sponsor, to submit to the securities commissioner upon request any report or statement required to be distributed to limited partners pursuant to §117.7(c) of this title (relating to Rights and Obligations of Participants). [The sponsor shall submit to the securities commissioner any information required to be filed with the securities commissioner, including, but not limited to, reports and statements required to be distributed to limited partners.]

(d) Liability and indemnification.

(1) The partnership agreement shall not provide for indemnification of the sponsor for any liability or loss suffered by the sponsor, nor shall it provide that the sponsor be held harmless for any loss or liability suffered by the partnership, unless all of the following conditions are met:

(A) the sponsor has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interest of the partnership;

(B) such liability or loss was not the result of negligence or misconduct by the sponsor; and

(C) such indemnification or agreement to hold harmless is recoverable only out of the assets of the partnership and not from the limited partners.

(1) Sponsors shall not attempt to pass on to participants the general liability imposed on them by law except that the program agreement may provide that a sponsor shall have no liability whatsoever to the program or to any participant for any loss suffered by the program which arises out of any action or inaction of the sponsor if the sponsor, in good faith, determined that such course of conduct was in the best interests of the program and such course of conduct did not constitute negligence of the sponsor. The sponsor may be indemnified by the program against losses sustained in connection with the program, provided the losses were not the result of negligence or misconduct on the part of the sponsors.]

(2) Indemnification of the sponsors or their affiliates will not be allowed for any liability imposed by judgment, and costs associated therewith, including attorneys' fees, arising from or out of a violation of state or federal securities laws associated with the offer and sale of partnership units. Indemnification will be allowed for settlements and related expenses of lawsuit alleging securities law violations, and for expenses incurred in successfully defending such lawsuits, provided that a court either:

(A) approves the settlement and finds that indemnification of the settlement and related costs should be made; or

(B) approves indemnification of litigation costs if a successful defense is made.

(2) The program may not incur the cost of that portion of liability insurance which insures the sponsor for any liability as to which the sponsor is prohibited from being indemnified under this section.]

(3) Every application for registration must contain an undertaking that such parties seeking indemnification will apprise the court of the positions of the securities commissioner and the SEC with respect to indemnification for securities law violations, before seeking court approval for indemnification.

(4) The program may not incur the cost of that portion of liability insurance which insures the sponsor for any liability as to which the sponsor is prohibited from being indemnified under this subsection.

(e) Fiduciary duty. The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in the sponsor's possession or control, and that the sponsor shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program. In addition, the program shall not permit the participant to contract away the fiduciary duty owed to the participant by the sponsor under the common law.

(f) Terminated sponsor.

(1) Upon the occurrence of a terminating event, the partnership may be required

to pay to the terminated sponsor all amounts than accrued and owing to the terminated sponsor. Additionally, the partnership may terminate the sponsor's interest in partnership income, losses, distributions, and capital by payment of an amount equal to the then present fair market value of the terminated sponsor's interest determined by agreement of the terminated sponsor and the partnership, or, if they cannot agree, by arbitration in accordance with the then current rules of the American Arbitration Association. The expense of arbitration shall be borne equally by the terminated sponsor and the partnership.

(2) The method of payment to the terminated sponsor must be fair; and must protect the solvency and liquidity of the partnership. Where the termination is voluntary, the method of payment will be deemed presumptively fair whether it provides for a noninterest bearing unsecured promissory note with principal payable, if at all, from distributions which the terminated sponsor otherwise would have received under the partnership agreement had the sponsor not terminated. Where the termination is involuntary, the method of payment will be deemed presumptively fair where it provides for an interest bearing promissory note coming due in no less than five years with equal installments each year.

§117.3. Suitability of the Participant.

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

(d) Minimum investment. A minimum initial cash purchase of \$2,500 per investor shall be required except for tax qualified plans for which no minimum investment is required. Subsequent transfers of such interests shall be limited to no less than a minimum unit equivalent to an initial minimum purchase, except for transfers by gifts, inheritance, intrafamily transfers, family dissolutions, and transfers to affiliates.]

§117.4. Fees—Compensation—Expenses.

(a) Fees, compensation, and expenses to be reasonable.

(1) The total amount of consideration of all kinds which may be paid directly or indirectly to all parties [the sponsor or its affiliates] shall be reasonable, [considering all aspects of the syndication program and the investors. Such consideration may include, but is not limited to:

(A) organization and offering expenses;

(B) compensation for acquisition services;

(C) compensation for development and/or construction services;

(D) compensation for program management;

(E) additional compensation to the sponsor/subordinated interests and promotional interests;

(F) real estate brokerage commissions on resale of property;

(G) property management fee;

(H) insurance services;

(I) mortgage servicing fee, but only in programs which make or invest in mortgage loans.

(2) Except to the extent that a subordinated interest is permitted for promotional activities pursuant to subsection (e) of this section, consideration may only be paid for reasonable and necessary goods, property, or services.]

(2)(3) The [application for qualification or registration and the] prospectus must fully disclose and itemize all consideration which may be received from the program directly or indirectly by the sponsor, its affiliates and underwriters, what the consideration is for and how and when it will be paid. This shall be set forth in one location in tabular form.

(b) Organization and offering expenses.

(1) Organization expenses. To be fair, just, and equitable, program organization expenses which are to be paid from the proceeds of the offering must be reasonable. Generally, most expenses incurred to establish and structure the program in a manner to make its interests acceptable for registration in any jurisdiction will be considered offering expenses and not organization expenses.

(2) Offering Expenses.] All organization and offering expenses incurred in order to sell program interests shall be reasonable, and the total expenses for marketing securities paid by the program shall in no event in the aggregate exceed the percentages specified in §113.4(g) of this title (relating to Application for Registration).

(c) Investment in properties.

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

(3) If the sponsor enters into an investment in properties commitment in excess of that specified in paragraph (2) of this subsection, the following mutually exclusive forms of compensation are viewed as not unreasonable alternatives to front-end fees:

(A) The sponsor may take an additional promotional interest in the net proceeds remaining from the sale or refinancing of the properties after payment of such proceeds to participants in an amount equal to 100% of capital contributions, equal to 1.0% for each 1.0% of additional investment in properties; or

(B) The sponsor may take a carried interest which participates in the net proceeds remaining from the sale or refinancing of properties only after payment of such proceeds to participants in an amount equal to 100% of capital contributions, equal to 1.0% for the first 2.0% of additional investment in properties, plus 1.0% for the next 1.5% of additional investment in properties, plus 1.0% for each 1.0% of additional investment in properties thereafter; or

(C) The sponsor may take a fully participating carried interest equal to 1.0% for the first 2.5% of additional investment in properties, 1.0% for the next 2.0% of ad-

ditional investment in properties, and 1.0% additional investment in properties thereafter.

(3) If the total amount of the investment in properties exceeds the minimum required amount in paragraph (2) of this subsection, for each 1.0% of front-end fees deferred the sponsor may take an additional promotional interest upon sale of the properties equal to 1.0% of the net proceeds remaining from the sale or refinancing of the property after payment to investors of an amount equal to 100% of capital contributions.]

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

(d)-(e) (No change.)

(f) Real estate brokerage commissions on resale of property. The total compensation paid to all persons for the sale of a program property shall be limited to a competitive real estate commission, not to exceed 6.0% of the contract price for the sale of the property. If the sponsor provides a substantial amount of the services in the sales [sale] effort, he may receive up to 1/2 of the competitive real estate commission, not to exceed 3.0%, and subordinated as in subsection (e) of this section. If the sponsor participates with an independent broker on resale, the subordination requirement shall apply only to the commission earned by the sponsor.

(g)-(i) (No change.)

§117.5. Conflicts of Interest and Investment Restrictions.

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

(g) Commingling of Funds. The funds of a program shall not be commingled with the funds of any other person. Nothing contained in this subsection however, shall prohibit a sponsor from establishing a master fiduciary account pursuant to which separate subtrust accounts are established for the benefit of affiliated limited partnerships, provided, that program funds are protected from claims of such other partnerships and/or creditors. The prohibition of this subsection shall not apply to investments meeting the requirements of subsection (h) of this section.

(h) Investments in other programs

(1) (No change.)

(2) Such prohibitions shall not apply to programs participating in the subsidized housing provisions of the National Housing Act or any similar programs that may be enacted, but unless prohibited by the applicable federal statute, such partnership (herein referred to as lower tier partnership) shall provide for its limited partners all of the rights and obligations required to be provided by the original program in §117.7 of this title (relating to Rights and Obligations of Participants) of these guidelines [rules].

(3) (No change.)

(i)-(j) (No change.)

(k) Completion bond requirements.

(1) The completion of property acquired which is under construction should be guaranteed at the price contracted by an

adequate completion bond or other satisfactory arrangements.

(2) For purposes of this subsection, satisfactory arrangements include, but are not limited to, the following:

(A) a written guarantee of completion by a person, supported by financial statements demonstrating sufficient net worth adequately collateralized by other real or personal properties or other persons guarantees;

(B) a retention of a reasonable portion of the purchase consideration as a potential offset to such purchase consideration in the event the seller does not perform in accordance with the purchase and sale agreement; and

(C) other satisfactory arrangements to guarantee completion may be made, provided they are disclosed in the prospectus and the prior written approval of the securities commissioner has been obtained.

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

§117.6. Nonspecified Property Programs.

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

(c) Statement of investment objectives. A nonspecified property program shall state types of properties in which it proposes to invest, such as first-user apartment projects, subsequent-user apartment projects, shopping centers, office buildings, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the program and the experience of the sponsors. As a minimum, the following restrictions on investment objectives shall be observed:

(1) Unimproved or nonincome producing property shall not be acquired except in amounts and upon terms which can be financed by the program's proceeds or from cash available for distribution from operations [flow]. Investments in such property shall not exceed 10% of the gross proceeds of the offering. Properties which are expected to produce income within a reasonable period of time shall not be considered nonincome producing. For purposes of this subsection two years shall be deemed to be presumptively reasonable.

(2) Investments in junior trust deeds and other similar obligations shall be prohibited, except for junior trust deeds which arise from the sale of program interests. [limited. Normally such investments shall not exceed 10% of the gross assets of the program.]

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

(d) (No change.)

(e) Special reports. At least quarterly, a special report of real property acquisitions within the prior quarter shall be sent to all participants until the proceeds are invested or returned to the partners as set forth in paragraph (d) of this subsection. Such notice shall describe the real properties, and include a description of the geographic locale and of the market upon which the sponsor is relying in projecting successful operation of the properties. All facts which reasonably appear to the sponsor to materially influence the

value of the property should be disclosed. The special report shall include, by way of illustration and not of limitation, a statement of the date and amount of the appraised value, if applicable, a statement of the actual purchase price including terms of the purchase, a statement of the total amount of cash expended by the program to acquire each property and a statement regarding the amount of proceeds in the program which remain unexpended or uncommitted. This unexpended or uncommitted amount shall be stated in terms of both dollar amount and percentage of the total amount of the offering of the program.

[(f) Assessments, installment payments, warrants, options, or other staged or deferred payments. Plans calling for such provisions shall not be allowed.]

(e)[(g)] Multiple programs. The method for the allocation of the acquisition of properties by two or more programs of the same sponsor seeking to acquire similar types of properties shall be reasonable. The method also shall be described in the prospectus. [Sponsors shall not be permitted to offer for sale more than one nonspecified property program at any point in time unless the programs have different investment objectives. Additionally, new offerings by the same sponsor shall not be permitted if that sponsor has not substantially committed or placed the funds raised from similar nonspecified property programs.]

§117.7. Rights and Obligations of Participants.

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

(c) Reports to holders of limited partnership interests. The partnership agreement shall provide that the sponsor shall cause to be prepared and distributed to the holders of program interests during each year the following reports:

(1) (No change.)

(2) In the case of all other program in addition to the annual report required by paragraph (4) of this subsection within 60 days after the end of the program's first six-month period, a semi-annual report containing the same information as to the preceding six-month period as that required in quarterly reports under paragraph (1) of this subsection.]

(2){(3)} In the case of all programs, within 75 days after the end of each program's fiscal year, all information necessary for the preparation of the limited partners' federal income tax returns.

(3){(4)} In the case of all programs, within 120 days after the end of each program's fiscal year, an annual report containing:

(A) a balance sheet as of the end of its fiscal year and statements of income, partners' equity, and changes in financial position and a cash flow statement, for the year then ended, all of which, except the cash flow statement, shall be prepared in accordance with generally accepted accounting

principles and accompanied by an auditor's report containing an opinion of an independent certified public accountant;

(B) a report of the activities of the program during the period covered by the report, and

(C) where forecasts have been provided to the holders of limited partnership interests, a table comparing the forecasts previously provided with the actual results during the period covered by the report.

(4)(5) Such report shall set forth distributions to limited partners for the period covered thereby and shall separately identify distributions from:

(A) cash flow from operations during the period;

(B) cash flow from operations during a prior period which had been held as reserves;

(C) proceeds from disposition of property and investments;

(D) lease payments on net leases with builders and sellers; and

(E) reserves from the gross proceeds of the offering originally obtained from the limited partners.

(5)(6) Where assessments have been made during any period covered by any report required by paragraphs (1), (2), and (4) of this subsection, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments.}; and]

[(6) Where any sponsor receives fees for services, then he shall, within 60 days of the end of each quarter wherein such fees were received, send to each limited partner a detailed statement setting forth the services rendered, or to be rendered by such sponsor and the amount of the fees received. This requirement may not be circumvented by lump-sum payments to management companies or other entities who then disburse the funds.]

(d) Access to Records. Every limited partner shall at all times have access to the records of the partnership and may inspect and copy any of them. A list of the names and address, of all of the limited partners shall be maintained as part of the books and records and shall be mailed to any limited partner upon request. A reasonable charge for copy work may be charged by the program. [The participants and their designated representatives shall be permitted access to all records of the program at all reasonable times.]

(e) (No change.)

(f) Redemption of program interests. Ordinarily, the program and the sponsor may not be mandatorily obligated to redeem or repurchase any of its program interests, although the program and the sponsor may not be precluded from purchasing such outstanding interest: if such purchase does not impair the capital or the operation of the program. Notwithstanding the foregoing, a real estate program may provide for man-

datory redemption rights under the following necessitous circumstances:

(1) (No change.)

(2) a substantial reduction in the owner's net worth or income provided that:

(A) the program has sufficient cash to make the purchase;

(B) the purchase will not be in violation of applicable legal requirements; and

(C) not more than 15% of the outstanding units are purchased in any year.

(D) where the purchase price is not mutually agreed upon, the matter shall be submitted to arbitration.

(g) (No change.)

(h) Assessments and defaults.

(1) Assessments. Assessments will not be allowed for nonspecified programs. [Except as provided in §117.6(f) of this title (relating to Nonspecified Property Programs).] In the case of specified [non-specified property] programs, assessments shall be permitted only when specific circumstances demonstrate a need. If the anticipated cash flow from property (after payment of debt service and all operating expenses) is not sufficient to pay taxes and/or special assessments imposed by governmental or quasi-government units, the program agreement may include a provision for assessability to meet such deficiencies, including those obligations of a defaulting participant. Assessability must be limited to the foregoing obligations, and all amounts derived from such assessments must be applied only to satisfaction of said obligations.

(2) (No change.)

(i) (No change.)

(j) Special report. Within 60 days after the end of each quarter during which there have been real property acquisitions, a special report (which may be part of the quarterly report) shall be sent to all participants until the proceeds of the offering are committed or returned to the investors. The report shall contain the following information:

(1) the location and a description of the general character of all materially important real properties acquired or presently intended to be acquired by or leased to the program, during the quarter;

(2) the present or proposed use of such properties and their suitability and adequacy for such use;

(3) the terms of any material lease affecting the property;

(4) the proposed method of financing, including estimated down payment, leverage ratio, prepaid interest, balloon payment(s), prepayment penalties, due-on-sale or encumbrance clauses and possible adverse effects thereof and similar details of the proposed financing plan; and

(5) a statement that title insurance and any required construction, permanent or other financing, and performance bonds or other assurances with respect to builders have been or will be obtained on all properties acquired.

§117.8. Disclosure and Marketing Requirements.

(a) (No change.)

(b) Contents of prospectus. The prospectus shall meet the requirements of Guide 5 of the [60 as promulgated under general] Securities and Exchange Commission [guides for the preparation of registration statements for the offering of securities] The description of the method for the allocation of the acquisition of properties by two or more programs of the same sponsor shall meet the requirements of §117.6(e) of this title (relating to Nonspecified Property Programs). The securities commissioner may require additional disclosure if, in the securities commissioner's opinion, specific facts concerning the offering require it.

(c) Forecasts.

(1) Use of forecasts. The presentation of predicted future results of operations of real estate programs shall be permitted but not required for specified property programs investing primarily in improved property [properties] and shall be prohibited for nonspecified property programs or specified property programs investing primarily in unimproved land. The covers of the prospectus must contain in bold face language one of the following statements.

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

(2) Forecasts for specified property programs shall be included in the prospectus, offering circular or sales material of the program only if they comply with the following requirements.

(A)-(C) (No change.)

(D) Additional disclosures and limitations. (i) Forecasts shall be for a period at least equivalent to the anticipated holding period for the property, [equipment,] or 10 years, whichever is shorter, and project a resale occurrence, including depreciation recapture, if applicable. The forecasted resale price must be reasonable.

(ii)-(iv) (No change.)-

(3) (No change.)

§117.9. Miscellaneous Provisions.

[(a) Fiduciary duty. The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in his immediate possession or control, and that he shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program. In addition, the program shall not permit the participant to contract away the fiduciary duty owed to the participant by the sponsor under the common law.]

(a)[(b)] Deferred payments. Deferred payments or similar arrangements on account of the purchase price of program interests shall not be allowed in the case of nonspecified programs, and in the case of specified programs [Arrangement for deferred payments on account of the purchase price of program interests] may be allowed.

only when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions:

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

(b)(c) Reserves. Provisions should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements, and contingencies. Normally, not less than 3.0% [5.0%] of the offering proceeds will be considered adequate. However, in programs that invest in or make mortgage loans, reserves in an amount greater than 1.0% of the offering proceeds will be considered adequate.

(c)(d) Reinvestment of cash flow. Reinvestment of cash flow [and proceeds on disposition of property. [Reinvestment of cash flow] (excluding proceeds resulting from a disposition or refinancing of property) shall not be allowed. The partnership agreement and the prospectus shall set forth that reinvestment of proceeds resulting from a disposition or refinancing will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of property. Such a prohibition must be contained in the prospectus.

(d)(e) Financial information required on application. In any offering of interests by a program, the program shall provide as an exhibit to the application the following financial information.

(1) Cash flow statement. If the program has been formed and owns assets, an unaudited cash flow statement for each of the last three fiscal years shall be part of the prospectus. If the program has operated less than three fiscal years, the statement(s) shall cover the period from organization to a current date.

(2) Financial statements of program. The prospectus shall include an audited balance sheet of the program as of the end of its most recent fiscal year.

(3)(1) Balance sheet of corporate sponsor. A balance sheet of any corporate sponsors as of the end of their most recent fiscal year, examined and reported upon by an independent certified public accountant and prepared in accordance with generally accepted accounting principles. An unaudited balance sheet as of a date not more than 135 days prior to the date of filing should also be prepared. Such statements shall be included in the prospectus.

(4)(2) Other sponsors. A balance sheet for each noncorporate sponsor (including individual partners or individual joint ventures [venturers] of a sponsor) as of a time not more than 135 days prior to the date of filing an application; such balance sheet shall be examined and reported upon by an independent certified public accountant under the limited review standards set forth by the American Institute of Certified Public Ac-

countants, and shall be signed and sworn to by such sponsors. A representation of the amount of such net worth must be included in the prospectus, or in the alternative, a representation that such sponsor meets the net worth requirements of §117.2(b) of this title (relating to Requirements of Sponsors).

(5) Interim financial information. Where the audited balance sheet is as of a date more than 90 days prior to the date of filing, an unaudited balance sheet as of a date not more than 90 days prior to the date of filing shall also be provided. Interim unaudited statements of income, partners' equity, and changes in financial position shall also be provided with the unaudited balance sheet in instances where such statements are required as part of the audited financial statements for the last fiscal year. When a program has operated less than one fiscal year, audited financial information is not required unless requested by the securities commissioner.

(6) Filing of other statements. The securities commissioner may permit the omission of one or more of the statements required under this subsection and the filing (in substitution thereof) of appropriate statements verifying financial information having comparable relevance to an investor in determining whether to invest in the program. Such substitution will only be allowed where the securities commissioner finds this would be consistent with the protection of investors.

(e)(f) Opinions of counsel. The application for qualification and registration shall contain a favorable ruling from the Internal Revenue Service or an opinion of independent counsel to the effect that the issuer will be taxed as a partnership and not as an association for federal income tax purposes. An opinion of counsel shall be in form and substance satisfactory to the securities commissioner, and shall be unqualified except to the extent permitted by the securities commissioner. However, an opinion of counsel may be based on reasonable assumptions, such as:

(1) facts or proposed operations as set forth in the offering circular or prospectus and organizational documents;

(2) the absence of future changes in applicable laws;

(3) the securities offered are paid for;

(4) compliance with certain procedures such as the execution and delivery of certain documents and the filing of a certificate of limited partnership or an amended certificate; and

(5) the continued maintenance of or compliance with certain financial, ownership, or other requirements by the issuer or sponsor.

(f)(g) Supplemental information. The securities commissioner may request from counsel as supplemental information such supporting legal memoranda and an analysis

as he shall deem appropriate under the circumstances. To the extent the opinion of counsel or Internal Revenue Service ruling is based on the maintenance of or compliance with certain requirements or conditions by the issuer or sponsor the offering circular or prospectus shall contain representations that such requirements or conditions will be met and the partnership agreement shall, to the extent practicable, contain provisions requiring such compliance. There shall be included also an opinion of independent counsel to the effect that the securities being offered are duly authorized or created and validly issued interests in the issuer, and that the liability of the public investors will be limited to their respective total agreed upon investment in the issuer.

(g)(h) Provisions of partnership agreement. The requirements and/or provisions of appropriate portions of the following sections shall be included in a partnership agreement: §117.2(c)-(f) [§117.2(c)] of this title (relating to Requirements of Sponsors); §117.4(c)-(i) [§117.4(d)-(h)] of this title (relating to Fees—Compensation—Expenses); §117.5(a)-(i) and (l) of this title (relating to Conflicts of Interest and Investment Restrictions); §117.6(c) and (d) [§117.6(c)-(f)] of this title (relating to Nonspecified Property Programs); §117.7(a)-(f), (h), and (j) [§117.7(a)-(f) and (h)] of this title (relating to Rights and Obligations of Participants), §117.9(a)-(c) [§117.9(a)-(d)] of this title (relating to Miscellaneous Provisions).

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 May 2, 1986.

TRD-8604159

Richard D. Latham
Commissioner
State Securities Board

Earliest possible date of adoption:

June 9, 1986

For further information, please call
(512) 474-2233.

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Chapter 133. Forms

★7 TAC §133.31

The State Securities Board proposes an amendment to §133.31, concerning the form captioned "real estate guidelines cross reference sheet." The amendment reflects proposed amendments to §117, concerning the administrative guidelines for the registration of real estate programs.

Richard D. Latham, securities commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Latham, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the review of real estate program offerings will be quicker since the cross reference sheet enables securities analysts to review such programs and process such applications more efficiently. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide that the board may adopt rules and regulation governing registration statements and applications and may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

§133.31. *State Securities Board Real Estate Guidelines Cross-Reference Sheet.* The State Securities Board adopts by reference the State Securities Board real estate guidelines cross reference sheet as amended in July, 1986 [January, 1984]. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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 May 2, 1986.

TRD-8604158 Richard D. Latham
Commissioner
State Securities Board

Earliest possible date of adoption:

June 9, 1986

For further information, please call
(512) 474-2233.

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Chapter 143. Administrative Guidelines for Registration of Real Estate Investment Trusts

★7 TAC §§143.1-143.21

The State Securities Board proposes new §§143.1-143.21, concerning administrative guidelines for registration of real estate investment trusts. The new sections set forth registration criteria for publically offered real estate investment trust offerings.

Richard D. Latham, securities commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Latham also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be uniformity of registration criteria for real estate investment trusts. The new sections reflect the guidelines for the registration of real estate investment trusts adopted by the North American Securities Administrators' Association, Inc. and the guidelines are applied by a number of other states registering such programs. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Denise Voigt Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The new sections are proposed under Texas Civil Statutes, Article 581, §28-1, which provide that the board may adopt rules and regulations governing registration statements and applications and may classify securities, persons, and matters within its jurisdiction, and prescribe different requirements for different classes.

§143.1. Introduction.

(a) Application. These guidelines apply to qualifications and registrations of real estate investment trusts (REITs). While applications that do not conform to the guidelines will be looked upon with disfavor, where good cause is shown, the securities commissioner may modify or waive all or any part of the guidelines. Similarly, the securities commissioner may add additional requirements where necessary to protect investors.

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

(1) Acquisition expenses—Expenses including but not limited to legal fees and expenses, travel and communications expenses, costs of appraisals, nonrefundable option payments on property not acquired, accounting fees and expenses, title insurance, and miscellaneous expenses related to selection and acquisition of properties, whether or not acquired.

(2) Acquisition fee—The total of all fees and commissions paid by any party in connection with the making or investing in mortgage loans or the purchase or development of property by a REIT, except a development fee paid to a person not affiliated with a sponsor in connection with the actual development of a project after acquisition of the land by the REIT. Included in the computation of such fees or commissions shall be any real estate commission, selection fee, development fee, nonrecurring management fee, or any fee of a similar nature, however designated.

(3) Adviser—The person(s) or entity responsible for directing or performing the

day-to-day business affairs of a REIT, including a person or entity to which an adviser subcontracts substantially all such functions. To the extent the provisions of these guidelines are germane they shall apply to self-administered REITs.

(4) Affiliate—

(A) Any person directly or indirectly controlling, controlled by, or under common control with another person;

(B) any person owning or controlling 10% or more of the outstanding voting securities or beneficial interests of such other person;

(C) any officer, director, trustee, general partner of such person; and

(D) if such other person is an officer, director, trustee, or partner of another entity, then the entity for which that person acts in any such capacity.

(5) Average invested assets—For any period, the average of the aggregate book value of the assets of the trust invested, directly or indirectly, in equity interests in and loans secured by real estate, before reserves for depreciation or bad debts or other similar noncash reserves computed by taking the average of such values at the end of each month during such period.

(6) Competitive real estate commission—Real estate or brokerage commission paid for the purchase or sale of a property which is reasonable, customary and competitive in light of the size, type, and location of such property.

(7) Contract price for the property—The amount actually paid or allocated to the purchase, development, construction, or improvement of a property exclusive of acquisition fees and acquisition expenses.

(8) Declaration of trust—The declaration of trust, certificate, or articles of incorporation or other governing instrument pursuant to which a REIT is organized.

(9) Independent trustee(s)—The trustee(s) of a REIT who are not affiliated, directly or indirectly, with an adviser of the REIT, whether by ownership of, ownership interest in, employment by, any material business or professional relationship with, or serves as an officer or director of, such adviser or an affiliated business entity of such adviser. A trustee shall not be considered independent if he or she is serving as a trustee for more than three REITs organized by a sponsor. Independent trustee(s) shall also mean those who perform no other services for the REIT, except as trustee(s). An indirect relationship shall include circumstances in which a member of the immediate family of a trustee has one of the foregoing relationships with an adviser of the REIT or the REIT for which he serves as trustee.

(10) Initial investment—That portion of the initial capitalization of the REIT contributed by the sponsor or its affiliates pursuant to §143.16 of this title (relating to Minimum Capital).

(11) Leverage—The aggregate amount

of indebtedness of a REIT for money borrowed (including purchase money mortgage loans) outstanding at any time, both secured and unsecured.

(12) Net assets—The total assets (other than intangibles) at cost before deducting depreciation or other noncash reserves less total liabilities, calculated at least quarterly on a basis consistently applied.

(13) Net income—For any period, total revenues applicable to such period, less the expenses applicable to such period other than additions to reserves for depreciation or bad debts or other similar noncash reserves. If the adviser receives an incentive fee, net income, for purposes of calculating total operating expenses in §143.14(b) of this title (relating to Total Expenses), shall exclude the gain from the sale of the REIT's assets.

(14) Offering and organizational expenses—Those expenses incurred in connection with and in preparing a REIT for registration and subsequently offering and distributing it to the public, including sales commissions paid to broker-dealers in connection with the distribution of the shares of the REIT and all advertising expenses.

(15) Prospectus—Shall have the meaning given to that term by the Securities Act of 1933, §2(10), including a preliminary prospectus; provided, however, that such term as used herein shall also include an offering circular as described in Rule 256 of the General Rules and Regulations, under the Securities Act of 1933 or, in the case of an intrastate offering, any document by whatever name known, utilized for the purpose of offering and selling securities to the public.

(16) Real estate investment trust (REIT)—A corporation, trust, or association (other than a real estate syndication) which is engaged primarily in investing in equity interests in real estate (including fee ownership and leasehold interests) or in loans secured by real estate or both.

(17) Shares—Shares of beneficial interest or of common stock of a REIT of the class that has the right to elect the trustees of such REIT.

(18) Shareholders of a REIT—The registered holders of its shares.

(19) Sponsor—Any person directly or indirectly instrumental in organizing, wholly or in part, a REIT, or any person who will manage or participate in the management of a REIT, and any affiliate of any such person but would not include a person whose only relationship with the REIT is as that of an independent property manager, whose only compensation is as such. Sponsor also does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services.

(20) Total operating expenses—All operating, general, and administrative expenses of the REIT as determined under gen-

erally accepted accounting principles except the expenses of raising capital, interest payments, taxes, noncash expenditures (e.g., depreciation, amortization, bad debt reserve), fees paid in compliance with §143.14(d) of this title (relating to Total Expenses), and the costs related directly to asset acquisition, operation, and disposition. The exclusion from total operating expenses for costs related directly to asset acquisition, operation, and disposition is intended to allow exclusion of expenses incurred on the individual property level but not to allow the exclusion of operating, general, and administrative expenses incurred on the REIT level (including advisers' fees other than fees paid in compliance with §143.14(d) of this title (relating to Total Expenses)).

(21) Trustee(s)—The member(s) of the board of trustees or directors or other body which manages the REIT.

(22) Unimproved real property—The property of a REIT which has the following three characteristics:

(A) an equity interest in property which was not acquired for the purpose of producing rental or other operating income;

(B) has no development or construction in process on such land; and

(C) no development or construction on such land is planned in good faith to commence on such land within one year.

§143.2. Fairness of REIT Offerings. The offering or sale of securities of a REIT may be deemed fair and equitable to public investors if any applicable statute of the jurisdiction in which the REIT is organized or its declaration of trust or any other operative instrument which may not be amended without the approval of the holders of at least a majority of the outstanding shares of the REIT contains provisions which satisfy the following guidelines. Registration applications not conforming to the guidelines shall be looked upon with disfavor, unless for good cause shown specific portions of the guidelines are waived by the securities commissioner. A public offering of equity securities of a REIT other than shares (i.e., voting shares) will be looked upon with disfavor unless it can be demonstrated that the shares of the REIT are publicly held. The voting rights per share of equity securities of the REIT (other than the publicly held equity securities of the REIT) sold in a private offering shall not exceed voting rights which bear the same relationship to the voting rights of the publicly held shares of the REIT as the consideration paid to the REIT for each privately offered REIT share bears to the book value of each outstanding publicly held share.

§143.3. Trustees.

(a) Number and election. The REIT shall have a minimum of three trustees, each of whom (other than a trustee elected to fill the unexpired term of another trustee) is elected by the shareholders of the REIT and

who shall serve for a term of one year. Nothing in this section shall prohibit a trustee from being reelected by the shareholders. Independent trustees shall nominate replacements for vacancies amongst the independent trustees' positions.

(b) Majority as independent trustees. The trustees shall establish written policies on investments and borrowing and shall monitor the administrative procedures, investment operations and performance of the REIT and the adviser to assure that such policies are carried out. The trustees may establish such committees as they deem appropriate (provided the majority of the members of each committee are independent trustees).

(c) Conflicts of interest.

(1) The REIT shall not purchase property from the sponsor, adviser, trustee, or affiliates thereof, unless a majority of trustees (including a majority of independent trustees) not otherwise interested in such transaction approve the transaction as being fair and reasonable to the REIT and at a price to the REIT no greater than the cost of the asset to such sponsor, adviser, trustee, or affiliate thereof, or, if the price to the REIT is in excess of such cost, that substantial justification for such excess exists and such excess is not unreasonable. In no event shall the cost of such asset to the REIT exceed its current appraised value.

(2) The REIT shall not sell property to the sponsor, adviser, trustee, or affiliates thereof.

(3) The REIT may not make loans to or borrow money from the sponsor, adviser, trustee, or affiliates thereof, unless a majority of trustees (including a majority of independent trustees) not otherwise interested in such transaction approve the transaction as being fair, competitive, and commercially reasonable and no less favorable to the REIT than loans between unaffiliated lenders and borrowers under the same circumstances.

(4) The REIT shall not invest in joint ventures with the sponsor, adviser, trustee, or affiliates thereof, unless a majority of trustees (including a majority of independent trustees) not otherwise interested in such transactions, approve the transaction as being fair and reasonable to the REIT and shall be on substantially the same terms and conditions as those received by the other joint venturers.

(5) Where the sponsor, adviser, trustee, or affiliates thereof, have sponsored other investment programs with similar investment objectives which have investment funds available at the same time as the REIT, the prospectus shall describe a reasonable method by which properties are to be allocated to the competing investment entities. It shall be the duty of the trustees (including the independent trustees) to insure such method is applied fairly to the REIT.

(6) All other transactions between

the REIT and the sponsor, adviser, trustee, or affiliates thereof, shall require approval by a majority of the trustees (including a majority of independent trustees) not otherwise interested in such transactions as being fair and reasonable to the REIT and on terms and conditions not less favorable to the REIT than those available from unaffiliated third parties.

(d) Removal of trustees. A trustee may be removed by the vote or written consent of the holders of a majority of the outstanding shares of the REIT and can be removed at a special meeting. The declaration of trust of the REIT shall provide for a call of a special meeting of shareholders for the purpose of removing a trustee in a manner consistent with the provisions of §143.7 of this title (relating to Special Meetings).

(e) Special act of the trustees. At, or before, the first meeting of the trustees, the declaration of trust shall be reviewed and ratified by a majority vote of the trustees and of the independent trustees. The prospectus shall disclose that such ratification is required.

(f) Responsibilities of trustees. The declaration of trust shall specifically charge the trustees of the REIT with a fiduciary duty to the shareholders to supervise the relationship of the REIT with the adviser. The declaration of trust shall set forth the specific requirements for and shall require the approval of at least a majority of the independent trustees of matters to which this subsection and §143.4 of this title (relating to Investment Policy); §143.6 of this title (relating to Reports and Meetings); §143.12 of this title (relating to Advisory Contract); §143.13 of this title (relating to Adviser Compensation); §143.14 of this title (relating to Total Expenses); §143.15 of this title (relating to Leverage); §143.17 of this title (relating to Appraisal); §143.18 of this title (relating to Indemnification); §143.19 of this title (relating to Distribution Reinvestment Plans); and §143.20 of this title (relating to Other Limitations).

(g) Experience of trustees. A trustee shall have had at least three years of relevant experience demonstrating the knowledge and experience required to successfully acquire and manage the type of assets being acquired by the REIT. At least one of the independent trustees shall have three years of relevant real estate experience.

§143.4. Investment policy. The prospectus relating to each offering of securities of a REIT must contain a statement in reasonable detail (except in coordination offerings with the Securities and Exchange Commission) of the investment policies and objectives of the REIT being followed at the time or intended to be followed by the trustees. Such registration statement of the securities of the REIT shall include an explanation of the borrowing policies of the REIT. The independent trustees shall review the investment policies of the REIT with sufficient fre-

quency and at least annually to determine that the policies being followed by the REIT at any time are in the best interests of its shareholders. Each such determination and the basis therefor shall be set forth in the minutes of the trustees. When requested by the securities commissioner, all documents incorporated by reference in coordination filings shall be submitted to the securities commissioner in connection with the application for registration of the REIT's securities.

§143.5. Liability of Shareholders. The declaration of trust shall provide that:

(1) the shares of the REIT shall be nonassessable by the REIT whether a trust, corporation, or other entity;

(2) the shareholders of the REIT which is not a corporation shall not be personally liable on account of any of the contractual obligations undertaken by the REIT; and

(3) all written contracts to which the REIT which is not a corporation is a party shall include a provision that the shareholder shall not be personally liable thereon.

§143.6. Reports and Meetings.

(a) Full disclosure of financial statements. The REIT shall prepare an annual report concerning its operations for each fiscal year ending after the initial public offering of its securities containing financial statements prepared in accordance with generally accepted accounting principles which are audited and reported on by independent certified public accountants. The REIT shall include in its annual report to shareholders:

(1) the ratio of the costs of raising capital during the period to the capital raised, and

(2) the aggregate amount of advisory fees and the aggregate amount of other fees paid to the adviser and all affiliates of the adviser by the REIT and including fees or charges paid to the adviser and all affiliates of the adviser by third parties doing business with the REIT.

(b) Full disclosure of transactions. The REIT shall also include in its annual report, separately stated, full disclosure of all material terms, factors, and circumstances surrounding any and all transactions involving the REIT, and the trustees, advisers, sponsors and/or affiliates thereof occurring in the year for which the annual report is made. Independent trustees shall be specifically charged with a duty to examine and comment in the report on the fairness of such transactions.

(c) Annual reports. Annual reports shall be mailed or delivered to each shareholder as of a record date after the end of such fiscal year and each holder of other publicly held securities of the REIT within 120 days after the end of the fiscal year to which it relates.

(d) Annual meeting. There shall be an annual meeting of the shareholders of the

REIT upon reasonable notice and within a reasonable period (not less than 30 days) following delivery of the annual report.

(e) Trustee requirements. The trustees, including the independent trustees, shall be required to take reasonable steps to insure that the requirements of this section are met.

§143.7. Special Meetings.

(a) Who may call. Special meetings of the shareholders may be called by the chief executive officer, by a majority of the trustees or by a majority of the independent trustees, and shall be called by any officer of the REIT upon written request of shareholders holding in the aggregate not less than 10% of the outstanding shares of the REIT entitled to vote at such meeting. The call of a special meeting shall state the nature of the business to be transacted and that no other business shall be considered at such meeting.

(b) Written notice. Upon receipt of a written request either in person or by registered mail stating the purpose(s) of the meeting requested by shareholders, the REIT shall provide all shareholders, within 10 business days after receipt of said request, written notice (either in person or by mail) of a meeting and the purpose of such meeting to be held on a date not less than 20 nor more than 60 days after receipt of said request, at a time and place convenient to shareholders.

§143.8. Inspection of Records. A list of the names and addresses of all shareholders shall be maintained as part of the books and records of the REIT. Inspection of the REIT books and records (including shareholder records) by the securities commissioner shall be provided upon request upon reasonable notice and during normal business hours. Inspection of such books and records by shareholders shall be permitted to the same extent as permitted under law applicable to shareholders of a corporation organized in the jurisdiction in which the REIT is organized.

§143.9. Distributions. The declaration of trust shall state the manner in which distributions to shareholders are to be determined.

§143.10. Change in Declaration of Trust. No change shall be made in the declaration of trust of the REIT without the vote or written consent of the holders of a majority of the outstanding shares.

§143.11. Termination of REIT. The declaration of trust shall provide for the termination of the REIT by a vote of shareholders holding a majority of its outstanding shares.

§143.12. Advisory Contract. It shall be the duty of the trustees to evaluate the performance of the adviser before entering into or renewing an advisory contract. The criteria used in such evaluation shall be reflected in the minutes of such meeting. Each contract for the services of an adviser entered

into by the trustees shall have a term of no more than one year. Each advisory contract shall be terminable by a majority of the independent trustees, or the adviser on 60 days written notice without cause. In the event of the termination of such contract, the adviser will cooperate with the REIT and take all reasonable steps requested to assist the trustees in making an orderly transition of the advisory function. The qualifications of the adviser shall be set forth in the prospectus relating to the initial public offering of the shares of the REIT and the trustees shall determine that any successor adviser possesses sufficient qualifications:

(1) to perform the advisory function for the REIT; and

(2) to justify the compensation provided for in its contract with the REIT.

§143.13. Adviser Compensation. The independent trustees shall determine from time to time and at least annually that the compensation which the REIT contracts to pay to the adviser is reasonable in relation to the nature and quality of services performed and that such compensation is within the limits prescribed by these guidelines. The independent trustees shall also supervise the performance of the adviser and the compensation paid to it by the REIT to determine that the provisions of such contract are being carried out. Each such determination shall be based on the factors set forth in paragraphs (1)-(7) of this section and all other factors such independent trustees may deem relevant and the findings of such trustees on each of such factors shall be recorded in the minutes of the trustees:

(1) the size of the advisory fee in relation to the size, composition, and profitability of the portfolio of the REIT;

(2) the success of the adviser in generating opportunities that meet the investment objectives of the REIT;

(3) the rates charged to other REITs and to investors other than REITs by advisers performing similar services;

(4) additional revenues realized by the adviser and its affiliates through their relationship with the REIT, including loan administration, underwriting or broker commissions, servicing, engineering, inspection, and other fees, whether paid by the REIT or by others with whom the REIT does business;

(5) the quality and extent of service and advice furnished by the adviser;

(6) the performance of the investment portfolio of the REIT, including income, conservation or appreciation of capital, frequency of problem investments, and competence in dealing with distress situations; and

(7) the quality of the portfolio of the REIT in relationship to the investments generated by the adviser for its own account.

§143.14. Total Expenses.

(a) Organization, offering and acqui-

sition expenses - determined annually. The declaration of trust shall provide that the independent trustees will determine, from time to time but at least annually, that the total fees and expenses of the REIT are reasonable in light of the investment experience of the REIT, its net assets, its net income, and the fees and expenses of other comparable advisers in real estate. Each such determination shall be reflected in the minutes of the meeting of the trustees. The organization, offering, and acquisition expenses shall be limited by the following.

(1) The organization and offering expenses paid in connection with the REIT's formation or the syndication of its shares shall be reasonable and shall in no event exceed an amount equal to 15% of the proceeds raised in an offering.

(2) The total of all acquisition fees and acquisition expenses paid by the REIT in connection with the purchase of a property by the REIT shall be reasonable and shall in no event exceed an amount equal to 6.0% of the contract price for the property, or, in the case of a mortgage loan, 6.0% of the funds advanced, unless a majority of the trustees (including a majority of the independent trustees) not otherwise interested in the transaction approve the transactions as being commercially competitive, fair, and reasonable to the REIT.

(b) Total operating expenses.

(1) The total operating expenses of the trust shall (in the absence of a satisfactory showing to the contrary) be deemed to be excessive if they exceed in any fiscal year the greater of 2.0% of its average invested assets or 25% of its net income for such year. The independent trustees shall have the fiduciary responsibility of limiting such expenses to amounts that do not exceed such limitations unless such independent trustees shall have made a finding that, based on such unusual and nonrecurring factors which they deem sufficient, a higher level of expenses is justified for such year. Any such finding and the reasons in support thereof shall be reflected in the minutes of the meeting of the trustees.

(2) Within 60 days after the end of any fiscal quarter of the trust for which total operating expenses (for the 12 months then ended) exceeded 2.0% of average invested assets or 25% of net income, whichever is greater, there shall be sent to the shareholders of the trust a written disclosure of such fact, together with an explanation of the factors the independent trustees considered in arriving at the conclusion that such higher operating expenses were justified.

(3) In the event the independent trustees do not determine such excess expenses are justified, the adviser shall reimburse the REIT at the end of the twelve month period the amount by which the aggregate annual expenses paid or incurred by the REIT exceed the limitations herein provided.

(c) Real estate brokerage commissions on resale of property. If an adviser, trustee, sponsor, or affiliate provides a substantial amount of the services in the effort to sell the property of the REIT, then he may receive up to one-half of the brokerage commission paid but in no event to exceed an amount equal to 3.0% of the contracted for sales price. In addition, the amount paid when added to the sums paid to unaffiliated parties in such a capacity shall not exceed the lesser of the competitive real estate commission or an amount equal to 6.0% of the contracted for sales price.

(d) Incentive fees.

(1) An interest in the gain from the sale of assets of the REIT, for which full consideration is not paid in cash or property of equivalent value, shall be allowed provided the amount or percentage of such interest is reasonable. Such an interest in gain from the sale of REIT assets shall be considered presumptively reasonable if it does not exceed 15% of the balance of such gain remaining after payment to shareholders, in the aggregate, of an amount equal to 100% of the original issue price of REIT shares (reduced by prior distribution of gain from the sale of REIT assets) per annum cumulative.

(2) In the case of multiple advisers, advisers and affiliates shall be allowed incentive fees provided such fees are distributed by a proportional method reasonably designed to reflect the value added to REIT assets by each respective adviser or affiliate.

§143.15. Leverage. The aggregate borrowings of the REIT, secured and unsecured, shall be reasonable in relation to the net assets of the REIT and shall be reviewed by the trustees at least quarterly. The maximum amount of such borrowings in relation to the net assets shall, in the absence of a satisfactory showing that a higher level of borrowing is appropriate, not exceed 300%. Any excess in borrowing over such 300% level shall be approved by a majority of the independent trustees and disclosed to shareholders in the next quarterly report of the REIT, along with justification for such excess.

§143.16. Minimum Capital. Prior to the initial public offering, the sponsor, or its affiliate, shall contribute to the REIT an amount not less than the lesser of 10% of the total net assets upon completion of the offering, or \$200,000 as an initial investment. The sponsor or its affiliate may not withdraw this initial investment for a period of one year following completion of the public offering and may only sell shares representing this initial investment through the market on which the REIT shares are normally traded.

§143.17. Appraisal. The consideration paid for real property acquired by the REIT shall ordinarily be based on the fair market value of the property as determined by a majority of the trustees. In cases in which a

majority of the independent trustees so determine, and in all cases in which assets are acquired from the advisers, trustees, sponsors, or affiliates, such fair market value shall be as determined by a qualified independent real estate appraiser selected by the independent trustees.

§143.18. Indemnification.

(a) Indemnification allowed. The trustees and adviser of the REIT shall be deemed to be in a fiduciary relationship to the public investors, and the prospectus shall so state. The trustees and advisor may be indemnified by the REIT for losses arising from the operation of the REIT if all of the following conditions are met:

- (1) the trustee or adviser has determined, in good faith, that the course of conduct which caused the loss or liability was in the best interests of the REIT; and
- (2) such liability or loss was not the result of negligence or misconduct by the trustee or adviser; and
- (3) such indemnification or agreement to hold harmless is recoverable only out of the assets of the REIT and not from the shareholders.

(b) Indemnification prohibited. Indemnification will not be allowed for any liability imposed by judgment, and costs associated therewith, including attorneys' fees, arising from or out of a violation of state or federal securities laws associated with the offer and sale of REIT shares. Indemnification will be allowed for settlements and related expenses of lawsuits alleging securities law violations, and for expenses incurred in successfully defending such lawsuits, provided that a court either:

- (1) approves the settlement and finds that indemnification of the settlement and related costs should be made; or
- (2) approves indemnification of litigation costs if a successful defense is made.

(c) Undertaking required. Every application for registration must contain an undertaking that such parties seeking indemnification will apprise the court of the positions of the securities commissioner and the SEC with respect to indemnification for securities laws violations, before seeking court approval for indemnification.

§143.19. Distribution Reinvestment Plans. All distribution reinvestment plans shall, at the minimum, provide for the following:

- (1) all material information regarding the distribution to the shareholder and the effect of reinvesting such distribution, including the tax consequences thereof, shall be provided to the shareholder at least annually; and
- (2) each shareholder participating in the plan shall have a reasonable opportunity to withdraw from the plan at least annually after receipt of the information required in paragraph (1) of this section.

§143.20. Other Limitations. The REIT may not:

- (1) invest more than 10% of its total assets in unimproved real property or mortgage loans on unimproved real property;
- (2) invest in commodities or commodity future contracts. Such limitation is not intended to apply to interest rate futures, when used solely for hedging purposes;
- (3) invest in or make mortgage loans unless an appraisal is obtained concerning the underlying property. In cases in which a majority of the independent trustees so determine, and in all cases in which the transaction is with the adviser, trustees, sponsor, or affiliates, such an appraisal must be obtained from an independent, qualified appraiser concerning the underlying property. This appraisal shall be maintained in the REIT's records for at least five years, and shall be available for inspection and duplication by any shareholder. In addition to the appraisal, a mortgagee's or owner's title insurance policy or commitment as to the priority of the mortgage or the condition of the title must be obtained. Further, the adviser and trustees shall observe the following policies in connection with investing in or making mortgage loans:

(A) the REIT shall not invest in real estate contracts of sale, otherwise known as land sale contracts, unless such contracts of sale are in recordable form and are appropriately recorded in the chain of title;

(B) the REIT shall not make or invest in mortgage loans, including construction loans, on any one property if the aggregate amount of all mortgage loans outstanding on the property, including the loans of the REIT, would exceed an amount equal to 85% of the appraised value of the property as determined by appraisal unless substantial justification exists because of the presence of other underwriting criteria;

(C) the REIT shall not make or invest in any mortgage loans that are subordinate to any mortgage or equity interest of the adviser, trustees, sponsors or affiliates of the REIT;

- (4) issue redeemable equity securities;
- (5) issue debt securities unless the historical debt service coverage (in the most recently completed fiscal year) as adjusted for known changes is sufficient to properly service that higher level of debt;
- (6) issue options or warrants to purchase its shares to the adviser, trustees, sponsors, or affiliates except on the same terms as such options or warrants are sold to the general public. The REIT may issue options or warrants to persons not so connected with the REIT but not at exercise prices less than the fair market value of such securities on the date of grant and for consideration (which may include services) that in the judgment of the independent trustees, has a market value less than the value of such option on the date of grant. Options or warrants issuable to the adviser, trustees, sponsors or affiliates shall not exceed an amount equal to

10% of the outstanding shares of the REIT on the date of grant of any options or warrants;

(7) invest in the equity securities of any nongovernmental issuer, including other REITs or limited partnerships for a period in excess of 18 months. Such investments in entities affiliated with the sponsor, adviser, trustees, or affiliates thereof will not be permitted unless accomplished in accord with §143.3(c)(4) of this title (relating to Trustees);

(8) issue its shares on a deferred payment basis or other similar arrangement.

§143.21. Use of Forecasts.

(a) Where permitted. The presentation of predicted future results of operations of the REIT shall be permitted if more than 75% of the net subscription proceeds are specified to assets disclosed in the prospectus by which shares are first offered to the public. The covers of the prospectus must contain in bold face language the following statement.

"Forecasts are contained in this prospectus (offering circular). Any predictions and representations, written or oral, which do not conform to those contained in the prospectus (offering circular) shall not be permitted."

(b) Specific requirements and prohibitions. Forecasts shall be included in the prospectus, offering circular or sales material of the REIT only if they comply with the following requirements:

(1) forecasts shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation;

(2) forecasts should be reviewed by an independent certified public accountant in accordance with the "Guide For A Review Of A Financial Forecast" as promulgated by the American Institute of Certified Public Accountants, and that person or firm should be identified in the prospectus or offering circular as being responsible for the review of the forecasts;

(3) no forecasts shall be permitted in any sales literature which does not appear in the prospectus or offering circular; and

(4) if any forecasts are included in the sales literature, all forecasts must be presented.

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 May 2, 1986

TRD-8604160 Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption:
June 9, 1986
For further information, please call
(512) 474-2233

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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 §9.10

The Texas Department of Community Affairs (TDCA) proposes new §9.10, concerning the allocation of Community Development Block Grant (CDBG) nonentitlement area funds under the Texas Community Development Program (TCDP). The new section establishes the interim financing fund under which eligible units of general local governments may receive funding with which to make interim financing loans for eligible projects.

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

Bill Pluta, director of the community development and housing division, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a greater opportunity for participation in economic development projects by eligible units of general local government. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Douglas C. Brown, General Counsel, 8317 Cross Park Drive, P.O. Box 13166, Austin, Texas 78711, within 30 days after the date of publication in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 4413(201), §4A, which provide the Texas Department of Community Affairs with the authority to allocate CDBG nonentitlement area funds to eligible counties and municipalities in accordance with rules and regulations adopted by the TDCA.

§9.10. Interim Financing Fund.

(a) General provisions. A local government may receive funding under this section to make a short-term interim financing loan to a for-profit business for an eligible project. Such loans may only be made for the purpose of providing construction and/or fixed assets financing. The interest rate on an interim financing loan will be negotiated based on the TDCA's credit analysis of the business to be assisted under this section. As funding under this section will only

be obligated each program year during the time between the date the U.S. Department of Housing and Urban Development announces its Community Development Block Grant State's Program grant to the State of Texas and the date on which Texas Community Development Program funds are first needed to obligate that program year's regular statewide competitions, applications under this fund must include an agreement of the applicant to return all program income (i.e., loan repayments) to the TDCA within the period of any resulting contract. A contractor may retain a negotiated portion of the interest payments made on such interim financing loans for administration. The provisions of §9.1 of this subchapter (relating to Allocation of Program Funds) apply to applications submitted under this fund.

(b) Funding cycle. Applications will be accepted by the TDCA during the time period specified in an annual notice published in the *Texas Register* for this purpose. The maximum amount of a contract is \$5 million.

(c) Selection procedures.

(1) Prior to the application deadline specified in subsection (b) of this section, each eligible unit of general local government may submit one or more applications for funding under the interim financing fund. Each applicant must complete the most recent application package for this fund to be considered for funding under this section. Financial disclosure information on the for-profit firm to be assisted as part of the proposed project includes, but is not limited to, three to five years of financial statements and a detailed cash flow analysis covering five years of the new or expanded operations of such firm and its parent, if applicable. The for-profit firm to be assisted must also obtain an irrevocable letter of credit from its financial institution to guarantee repayment of the interim financing loan directly to the TDCA. The application must also include the agreement specified in subsection (a) of this section.

(2) Upon receipt of an application, the TDCA staff will perform an initial review to determine whether the application is complete and whether the proposed activities are eligible for funding. The TDCA will also conduct an on-site management review to evaluate the proposed project and the applicant's capacity to manage it if funded.

(3) Upon positive response from the management review team, the application will be forwarded to the TDCA staff for a full-credit analysis to make a preliminary determination of the appropriate amount of funding and the loan term and rate.

(4) The members of a technical review committee selected by the executive director of the TDCA from among program or division directors within the TDCA or other appropriate state agencies will then review the applicant's ability to satisfy all selection requirements. An applicant may at-

tend technical review committee meetings except during discussions of confidential information concerning a project proposed by another applicant. An applicant may also make a brief presentation to the committee to provide pertinent information regarding its project.

(5) Funding recommendations will then be provided to the executive director of the TDCA.

(6) The executive director of the TDCA will then submit final recommendations for project awards to the governor for final review and announcement of the contract awards.

(7) Upon announcement of contract awards by the governor, the TDCA staff will begin working with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the TDCA may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(d) Selection requirements. The following is an outline of the selection requirements that must be satisfied in order to be recommended for funding under the interim financing fund.

(1) The interim financing funds must be necessary or appropriate to carry out the project proposed in the application. Among the factors that will be reviewed to determine an applicant's satisfaction of this requirement are the following:

(A) amount of funds requested;
(B) whether permanent financing for the proposed project is in place;
(C) extent of the coordination with federal or state employment training programs, such as those established pursuant to the Job Training Partnership Act.

(2) The proposed project must primarily benefit persons of low and moderate income. The factors that will be reviewed to determine an applicant's satisfaction of this requirement are the following:

(A) the number of full-time permanent jobs that will be created or retained as a result of the proposed project;
(B) the number of such jobs that will benefit low and moderate income persons.

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 May 1, 1986.

TRD-8604083 Douglas C. Brown
General Counsel
Texas Department of
Community Affairs

Earliest possible date of adoption:
June 9, 1986
For further information, please call
(512) 834-8060.

TITLE 13. CULTURAL RESOURCES

Part II. Texas Historical Commission

Chapter 21. Museum Services

★ 13 TAC §21.3

The Texas Historical Commission proposes an amendment to §21.3, concerning the museum services department of the Texas Historical Commission grant program for history museums. The amended section is broader and more clearly defines the functions and duties of the museum department. The public will benefit from the publication of the section in a pamphlet that will include complete agency sections, as well as the museum sections. The revised, reformatted agency sections will be easier to read and comprehend.

George Ramirez, fiscal officer, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Curtis Tunnell, executive director, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the sections will be printed in pamphlet format and will provide much needed guidance to the public concerning the functions of the Texas Historical Commission and the responsibilities of the state historic preservation officer. The sections will be used uniformly in dealing with the public on matters relating to historic preservation. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Cindy Laguna Dally, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 6145, §16B, which provide the Texas Historical Commission with the authority to provide leadership and coordinate services in the field of historical preservation, to promulgate rules and regulations, and to administer small history museum grants.

§21.2. Grant Program for History Museum.

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

(d) Filing applications. A copy of the application form may be obtained from the Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. The deadline for delivery of five copies of the form to the commission offices is 5 p.m. on **January 10 of each biennium** [January 2 of each year], or 5 p.m. of the next regular work day if January 10 [2] falls on a weekend or holiday. Applications received after this date and

time will be returned.

(e) Determination of awards. The museum committee evaluates grant applications and recommends those projects deemed most worthy. Grants are awarded by vote of the Texas Historical Commission at large at the first quarterly meeting of each **biennium** [calendar year], or at other meetings designated as appropriate by vote of the commission. The meeting date will constitute a grant's award date. Reallocation of returned funds shall be made by the executive committee of the commission upon the recommendation of the Department of Museum Services. **During the biennium, small emergency grants of no more than \$500 may be awarded at the discretion of the executive director upon the recommendations of the Department of Museum Services. Emergency grants must be completed within one year of the date awarded or by the end of the biennium, whichever is first.**

(f)-(k) (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 May 2, 1986.

TRD-8604219

Curtis Tunnell
Executive Director
Texas Historical
Commission

Earliest possible date of adoption:

June 9, 1986

For further information, please call
(512) 483-6100

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TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System

Chapter 25. Administrative Council

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

★ 19 TAC §25.32

The Coordinating Board, Texas College and University System proposes an amendment to §25.32, concerning definitions. These amendments will: add a new definition of date of retirement to provide a bridge between the definition of retired employee and the procedures for enrollment in the retired employee plan; clarify and strengthen the requirements for eligibility as a retired employee; and add two new definitions of membership service and state service credit.

James McWhorter, executive secretary, Administrative Council has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. McWhorter also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the intent in the rules and regulations concerning the definition of a retired employee eligible for insurance coverage and when such eligibility becomes effective. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to James McWhorter, Executive Secretary to the Administrative Council, Coordinating Board, Texas College and University System, PO Box 12788, Austin, Texas 78711.

The amendment is proposed under the Texas Insurance Code, Article 3.40-3, §4(b) (4)(G), which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provisions of the Act to carry out its statutory responsibilities.

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

Date of retirement—The date of retirement is the date a former employee satisfies the basic criteria set forth in the definition of retired employee. This definition will not apply to individuals who have separated employment prior to the effective date of adoption.

Membership service—Service during a time that a person is a member of either TRS, ERS, or ORP.

Retired employee—Any former employee, regardless of date of retirement who retires or has retired and who receives or is eligible to receive benefits under a retirement provision under the jurisdiction of:

(A) the Teacher Retirement System of Texas, pursuant to Texas Education Code, Chapter 3, as amended, **provided, however, that the employee has at least 10 years of state service credit under ORP, TRS, or ERS (including public community/junior college service) or a combination thereof;**

(B) the Optional Retirement Program, Texas Education Code, 51.351 *et. seq.*, as amended, provided, however, that the employee has at least 10 years of state service credit [creditable] under [either] ORP, TRS, or ERS (including public community/junior college service), **or a combination thereof, and any withdrawn TRS or ERS state service credit when the withdrawal is**

made in conjunction with the election to enroll in ORP or if the ORP election precludes the repurchase of withdrawn state service credit under TRS or ERS and is at least 55 years of age (no age limit with 30 years' services credit [participation]);

(C) the Employees Retirement System of Texas, Chapter 352, 50th Legislature, 1947, as amended (Texas Civil Statutes, Article 6228a), as authorized by Chapter 75, 54th Legislature, 1955, as amended (Texas Civil Statutes, Article 6228a-2), provided, however, that the employee has at least 10 years of state service credit under ORP, TRS, or ERS (including public community/junior college service), or a combination thereof, and whose last state employment (including community/junior college employment) prior to retirement was as an employee of an institution of higher education in Texas in a benefits eligible status;

(D) any other federal or state statutory retirement program to which the institution has made employer contributions, provided, however, that the employee has at least 10 years of state service credit [creditable] under [either] ORP, TRS, or ERS (including public community/junior college service), or a combination thereof; and further provided that the individual is not a former member of ORP, TRS, or ERS who has voluntarily forfeited retirement benefits, except that TRS or ERS state service credit withdrawn in conjunction with the election to enroll in ORP or if the ORP election precludes the repurchase of withdrawn state service credit under TRS or ERS shall not be considered as voluntary forfeiture. However, persons who have rendered the appropriate amount of state service, but who are not eligible for a retirement benefit without establishing credit for all previous unreported eligible service under TRS, may retire under this section.

(E) in addition, retired employee shall mean any former employee who has not reached the age to apply for full formula service retirement benefits but who has reached a state of permanent and total disability, where the individual is unable to perform the assigned duties and:

(i) if the individual is approved for disability retirement benefits by the Teacher Retirement System of Texas, then that individual may continue in the institution's group insurance plan for the duration of the disability if the individual has at least 10 years of state [creditable] service credit in TRS, or may continue in the institution's group insurance plan for a period of time equal to the number of months of state [creditable] service credit in TRS if the individual has less than 10 years of state [creditable] service credit [in TRS] and has a nonoccupational disability; or

(ii) If the individual is not a participant in the Teacher Retirement System but has been determined by the institution to be permanently and totally disabled as

defined by TRS, then that individual may continue in the institution's group insurance plan for the duration of the disability if the individual has at least 10 years of state service credit [creditable] under [either] ORP, TRS, or ERS (including public community/junior college service), or a combination thereof and any withdrawn TRS or ERS state service credit when the withdrawal is made in conjunction with the election to enroll in ORP or if the ORP election precludes the repurchase of withdrawn state service credit under TRS or ERS, or may continue in the institution's group insurance plan for a period of time equal to the number of months of such state service credit if the individual has less than 10 years of such state service credit and has a nonoccupational disability; or

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

[Service—Any personal services of an employee creditable in accordance with rules and regulations promulgated by the Administrative Council.]

State service credit—The amount of membership service ascribed to a person's account in either TRS, ERS, or ORP, while employed by the state as a regular employee in a benefits eligible status (including public community/junior college employment) or which all required contributions have been made. For the purpose of ORP, one year of state service credit shall be calculated the same as it is calculated under TRS.

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 May 2, 1986.

TRD-8604220 James McWhorter
Executive Secretary
Administrative Council
Coordinating Board, Texas
College and University
System

Earliest possible date of adoption

June 9, 1986

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

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Part II. Texas Education Agency

Chapter 109. Budgeting, Accounting, and Auditing Subchapter D. Adoptions by Reference

★ 19 TAC §109.61

The Texas Education Agency proposes an amendment to §109.61, concerning the proposed adoption by reference of the Financial Accounting Manual, Bulletin 679. The amendment reflects changes in the bulletin made necessary by editing, new terminology, updated budget form, and

audit report illustrations, and the provisions of House Bill 72, 68th Legislature, 1985, which requires school districts to account for general fund expenditures for major program instructional areas. The amendment also deletes a reference to the agency's old address.

Lynn M. Moak, deputy commissioner for research and information, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state government or small businesses as a result of enforcing or administering the section. There will be fiscal implications for local government, but they are indeterminate. The section requires some software maintenance, but costs will vary from district to district.

Mr. Moak and Dr. Beverly Bardsley also have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more accurate and detailed information on the cost of educational programs, and the deletion of an outdated reference to the agency's old address. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Dr. Beverly J. Bardsley, Director for Policy Development, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. 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 proposal is published in the *Texas Register*.

This amendment is proposed under the Texas Education Code, §11.52(d), which authorizes the commissioner of education to prescribe uniform systems of forms, reports, and records necessary to secure information from county school officers and local school districts, and the Texas Education Code, §23.48, which authorizes the State Board of Education to require each district to report management, cost accounting, and financial information by district, campus, and program.

§109.61. Financial Accounting Manual.

(a) The rules for financial accounting are described in the official Central Education Agency bulletin, *Financial Accounting Manual*, Bulletin 679, as amended May 1986 [February 1985], which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8 a.m.-5 p.m., except holidays, Saturdays, and Sundays, at the Central Education Agency, [On the effective date of this section, the agency is located at 201 East Eleventh Street, Austin, Texas 78701. During the summer of 1985, the agency will move to] 1701 North Congress Avenue,

Austin, Texas 78701. [After the agency's move, the section will be available for inspection at that location.]

(b) (No change.)

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604063 W. N. Kirby
Commissioner of
Education

Earliest possible date of adoption:
June 9, 1986

For further information, please call
(512) 463-9682.

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TITLE 25. HEALTH SERVICES

Part I. Department of Health Chapter 135. Ambulatory Surgical Centers

★ 25 TAC §135.1

The Texas Department of Health proposes the repeal of §135.1 and new §§135.1-135.28, 135.41-135.43, 135.51-135.52, and 135.61-135.67, concerning licensing of ambulatory surgical centers. The sections include purpose and scope, definitions, unlicensed ambulatory surgical centers, exemptions, initial applicants, inspections, renewal of annual license, conditions of annual license, license denial, suspension, and revocation, complaints, incidents, confidentiality, standards for operation of an ambulatory surgical center, and life safety code and design requirements. Existing §135.1, concerning fees, is proposed for repeal because the context is incorporated into the new sections; the fees remain the same.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed repeal and new sections will be in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the repeal and new sections. The effect on state government is an estimated additional cost of \$75,000 for each year in 1986-1990 and an estimated increase in revenue of \$75,000 for each year in 1986-1990. The cost of compliance with the repeal and new sections for small business will be the ambulatory surgical center license fee established in §135.3. The cost of compliance for a small business compared with the cost of compliance for the largest is based on cost per employee. A large nine operating room ambulatory surgical center has approximately 45 employees at a cost of \$22.22 per employee versus a one room ambu-

latory surgical center with five employees at a cost of \$200 per employee. There is no effect on local government.

Mr. Seale also has determined that for each year of the first five years the repeal and new sections are in effect the public benefit anticipated as a result of enforcing the repeal and new sections will be that the license fee will allow a measure of control for compliance with standards and quality assurance of ambulatory surgical centers. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal and new sections.

Comments on the proposal may be submitted to Juanita Carrell, R.N., Ed.D., Director, Health Facility Licensure and Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Comments will be received for 30 days from the date of publication of the proposed sections. A public hearing will be held at the Texas Department of Health's auditorium, 1100 West 49th Street, Austin, Texas, beginning at 9 a.m. on Tuesday, June 10, 1986.

The repeal is proposed under Texas Civil Statutes, Article 4437f-2, §3, which authorize the Texas Board of Health to adopt rules covering ambulatory surgical centers.

§135.1. Fees.

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 May 2, 1986

TRD-8604136 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption.
July 12, 1986

For further information, please call
(512) 458-7245

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Operating Requirements for Ambulatory Surgical Centers

★ 25 TAC §§135.1-135.28

The new sections are proposed under Texas Civil Statutes, Article 4437f-2, §3, which authorize the Texas Board of Health to adopt rules covering ambulatory surgical centers

§135.1. Purpose and Scope.

(a) The purpose of these sections is to implement Texas Civil Statutes, Article 4437f-2, which require ambulatory surgical centers to be licensed by the Texas Department of Health.

(b) These sections provide minimum standards for ambulatory surgical center li-

censes and procedures for granting, denying, suspending, and revoking a license and licensure fees. The sections under this heading primarily cover the licensing procedures and standards for operation, and the remaining sections of this chapter primarily cover the requirements concerning construction design and the life safety code.

(c) The standards pertaining to the construction and design, the qualifications of the professional staff and other personnel, the equipment essential to the health and welfare of the patients, sanitary and hygienic conditions, and the quality assurance program may not exceed the minimum standards for certification under the Social Security Act, Title XVIII, Public Law 89-87, 1965. Should the state standards exceed the federal requirements in these areas, the federal requirements will control.

§135.2. *Definitions.* The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Act—Texas Ambulatory Surgical Center Licensing Act, Texas Civil Statutes, Article 4437f-2.

Administrator—A person who is a physician, registered nurse, or has a baccalaureate or postgraduate degree in administration or a health-related field; or has one year of administrative experience in a health care setting.

Ambulatory surgical center (ASC)—A facility that operates primarily to provide surgical services to patients who do not require overnight hospital care.

Autologous blood units—Units of blood or blood products derived from the recipient.

Available—On the premises and sufficiently free from other duties to enable the individual to respond rapidly to emergency situations.

Certified registered nurse anesthetist (CRNA)—A currently licensed registered nurse who also has current certification as a nurse anesthetist.

Change of ownership—

(A) A sole proprietor who transfers all or part of the ASC's ownership to another person or persons;

(B) The removal, addition or substitution of a person or persons as a partner in an ASC-owned by a partnership; or

(C) A corporation that transfers all or part of the corporate stock which represents the ASC's ownership to another person or persons.

CLIA licensed laboratory—A facility that has been licensed in accordance with regulations of the Clinical Laboratory Improvement Act of 1967 (42 United States Code 263a).

Department—the Texas Department of Health.

Director—The director of the Health Facility Licensure and Certification Division of the Texas Department of Health or his or her designee.

Disposal—The discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste (whether containerized or uncontainerized) into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

FDA approved blood bank—A facility that has been licensed in accordance with the Food and Drug Administration requirements in the preparation of blood and blood products.

Health care practitioners—Individuals currently licensed under the laws of this state who may provide services in an ASC, including doctors of medicine, doctors of osteopathy, doctors of dental surgery or dental medicine, doctors of podiatric medicine, doctors of optometry, chiropractors, registered nurses, and licensed vocational nurses.

Infectious waste—Waste containing pathogens or biologically active material which because of its type, concentration, and quantity is capable of transmitting disease to persons exposed to the waste.

Licensed vocational nurse—A person who is currently licensed under the laws of this state to use the title, licensed vocational nurse.

Medicare-approved reference laboratory—A facility that has been certified and found eligible for Medicare reimbursement and includes hospital laboratories which may be Joint Commission on Accreditation of Hospitals or American Osteopathic Association accredited or nonaccredited Medicare approved hospitals, Medicare-certified independent laboratories, CLIA-licensed independent laboratories (licensed according to the Clinical Laboratory Improvement Act of 1967 regulation).

Pathological waste—Any material that may produce, harbor, or transmit any disease-producing agent or microorganism.

Physician—A person who is currently licensed under the laws of this state to practice medicine and who holds a doctor of medicine or a doctor of osteopathy degree.

Person—Any individual, firm, partnership, corporation, or association.

Registered nurse—A person who is currently licensed under the laws of this state as a registered nurse.

Statute—Texas Civil Statutes, Article 4437f-2.

Title XVIII—Title XVIII of the United States Social Security Act, Public Law 89-87, 1965.

§135.3. Fees.

(a) The Texas Board of Health has established the following schedule of fees for licensure as an ambulatory surgical center.

(1) Initial license fee—\$1,000.

(2) Renewal license fee—\$1,000.

(b) The department will not consider an application as officially submitted until the applicant pays the application fee. The

fee must accompany the application form.

(c) Fees paid to the department are not refundable.

(d) Any remittance submitted to the department in payment of a required fee must be in the form of a certified check, money order, or personal check, and made out to the Texas Department of Health.

(e) The board shall make periodic reviews of its fee schedule and make any adjustments necessary to provide funds to meet its expenses without creating an unnecessary surplus. Such adjustments shall be through section amendments.

§135.4. *Governance of a Licensed ASC.* ASCs that do not participate under Title XVIII shall comply with the following.

(1) The ambulatory surgical center must have a governing body that sets policy and assumes full legal responsibility for the total operation of the ASC.

(2) The governing body shall be responsible for assuring that medical staff by-laws are current and on file.

(3) The governing body shall address and is fully responsible, either directly or by appropriate professional delegation, for the operation and performance of the ASC. Governing body responsibilities include, but are not limited to:

(A) determining the mission, goals, and objectives of the ASC;

(B) assuring that facilities and personnel are adequate and appropriate to carry out the mission;

(C) establishing an organizational structure and specifying functional relationships among the various components of the ASC;

(D) adopting by-laws or similar rules and regulations for the orderly development and management of the ASC;

(E) adopting policies or procedures necessary for the orderly conduct of the ASC;

(F) assuring that the quality of care is evaluated and that identified problems are appropriately addressed;

(G) reviewing all legal and ethical matters concerning the ASC and its staff and, when necessary, responding appropriately;

(H) maintaining effective communication throughout the ASC;

(I) establishing a system of financial management and accountability that includes an audit appropriate to the ASC;

(J) determining a policy on the rights of patients;

(K) approving all major contracts or arrangements affecting the medical care provided under its auspices, including, but not limited to, those concerning:

(i) the employment of health care practitioners;

(ii) an effective procedure for the immediate transfer to a hospital of patients requiring emergency care beyond the capabilities of the ASC. The ASC must have

a written transfer agreement with a hospital or all physicians performing surgery at the ASC must have admitting privileges at a local hospital;

(iii) the use of external laboratories;

(iv) an effective procedure for obtaining emergency laboratory, radiology, and pharmaceutical services if laboratory, x-ray, and pharmacy services are not provided onsite;

(v) the provision of education to students and postgraduate trainees if the ASC participates in such programs;

(L) formulating long-range plans in accordance with the mission, goals, and objectives of the ASC;

(M) operating the ASC without limitation because of race, creed, sex, or national origin;

(N) assuring that all marketing and advertising concerning the ASC does not imply that it provides care or services which it is not capable of providing; and

(O) developing a system of risk management appropriate to the ASC including, but not limited to:

(i) periodic review of all litigation involving the ASC, its staff, and health care practitioners;

(ii) periodic review of all incidents reported by staff and patients;

(iii) review of all deaths, trauma, or adverse reactions occurring on premises; and

(iv) resolution of patient complaints.

(4) The governing body shall provide for full disclosure of ownership to the department.

(5) The governing body shall meet at least annually and keep such minutes or other records as may be necessary for the orderly conduct of the ASC.

(6) If the governing body elects, appoints, or employs officers and administrators to carry out its directives, the authority, responsibility, and functions of all such positions shall be defined.

(7) When a majority of its members are physicians, the governing body, either directly or by delegation, shall make (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges. When a majority of the members of the governing body are not physicians, the ASC's by-laws or similar rules and regulations shall specify a procedure for establishing medical review for the purpose of making (in a manner consistent with state law and based on evidence of the education, training, and current competence of the physician) initial appointments, reappointments, and assignment or curtailment of medical privileges.

(8) The governing body shall provide (in a manner consistent with state law and based on evidence of education, train-

ing, and current competence) for the initial appointment, reappointment, and assignment or curtailment of privileges and practice for nonphysician health care personnel and practitioners.

(9) The governing body shall encourage personnel to participate in continuing education that is relevant to their responsibilities within the ASC.

§135.5. Rights of Patients in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) Patients shall be treated with respect, consideration, and dignity.

(2) Patients shall be provided appropriate privacy.

(3) Patients' disclosures and records shall be treated confidentially and, except when required by law, patients shall be given the opportunity to approve or refuse their release.

(4) Patients shall be provided, to the degree known, complete information concerning their diagnosis, treatment, and prognosis. When it is medically inadvisable to give such information to a patient, the information shall be provided to a person designated by the patient or to a legally authorized person.

(5) Patients shall be given the opportunity to participate in decisions involving their health care, except when such participation is contraindicated for medical reasons.

(6) Information shall be available to patients and staff concerning:

(A) patient rights, including those specified in paragraphs (1)-(5) of this section;

(B) patient conduct and responsibilities;

(C) services available at the ASC;

(D) provisions for after-hours and emergency care;

(E) fees for services;

(F) payment policies;

(G) patient's rights to refuse to participate in experimental research; and

(H) methods for expressing grievances and suggestions to the ASC.

(7) Patients shall be informed of their right to change primary or specialty physicians if other qualified physicians are available.

§135.6. Administration of a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) Administrative policies, procedures, and controls shall be established and implemented to assure the orderly and efficient management of the ASC. Administrative responsibilities shall include, but are not limited to:

(A) enforcing policies delegated by the governing body;

(B) employing qualified management personnel;

(C) long-range and short-range planning for the needs of the ASC, as deter-

mined by the governing body;

(D) using methods of communicating and reporting designed to assure the orderly flow of information within the ASC;

(E) controlling the purchase, maintenance, and distribution of the equipment, materials, and facilities of the ASC;

(F) establishing lines of authority, accountability, and supervision of personnel;

(G) establishing controls relating to the custody of the official documents of the ASC; and

(H) maintaining the confidentiality, security, and physical safety of data on patients and staff.

(2) Personnel policies shall be established and implemented to facilitate attainment of the mission, goals, and objectives of the ASC. Personnel policies shall:

(A) define and delineate functional responsibilities and authority;

(B) require the employment of personnel with qualifications commensurate with job responsibilities and authority, including appropriate licensure or certification;

(C) require periodic appraisal of each person's job performance;

(D) specify responsibilities and privileges of employment;

(E) be made known to employees at the time of employment; and

(F) provide adequate orientation and training to familiarize all personnel with the ASC's policies, procedures, and facilities.

(3) The ASC shall periodically assess patient satisfaction with services and facilities provided by the ASC. The findings shall be reviewed by the governing body.

(4) When students and postgraduate trainees are present, their status shall be defined in the ASC's personnel policies.

(5) The status of each category of allied health professionals shall be included in personnel policies and appropriate job descriptions shall be developed.

§135.7. Quality of Care in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) All health care practitioners shall have the necessary and appropriate training and skills to deliver the services provided by the ASC.

(2) Health care practitioners shall practice their professions in an ethical and legal manner.

(3) Patient care responsibilities shall be delineated for all nursing service personnel. Nursing services shall be provided in accordance with recognized standards of practice. There shall be a registered nurse available for emergency treatment whenever there is a patient in the ASC.

(4) The provision of high-quality health care services shall be demonstrated by at least the following:

(A) education of, and effective communication with, patients concerning the diagnosis and treatment of their medical con-

ditions, appropriate preventive measures, and use of the health care system;

(B) accessible and available health services;

(C) appropriate and timely diagnostic procedures;

(D) treatment that is consistent with clinical impression or working diagnosis;

(E) appropriate and timely consultation;

(F) absence of clinically unnecessary diagnostic or therapeutic procedures;

(G) patient cooperation;

(H) continuity of care;

(I) provision for services when the ASC is not open;

(J) appropriate, accurate, and complete medical record entries;

(K) adequate transfer of information when patients are transferred to and from other health care providers; and

(L) patient satisfaction.

(5) When clinically indicated, patients shall be contacted as quickly as possible for follow-up regarding significant problems and/or abnormal laboratory or radiologic findings that have been identified.

(6) When the need arises, patients shall be transferred from the care of one health care practitioner to another.

(A) Adequate specialty consultation services shall be made available by prior arrangement.

(B) Referral to another health care practitioner shall be clearly outlined to the patient and arranged with the accepting health care practitioner prior to transfer.

(7) Concern for the appropriateness of care shall be governed by the following:

(A) the relevance of health care services to the needs of the patients;

(B) the absence of duplicative diagnostic procedures;

(C) the appropriateness of treatment frequency;

(D) the use of the most cost effective alternate resources when suitable; and

(E) the use of ancillary services that are consistent with patients' needs.

(8) When the need arises, provisions shall be made for health care practitioners and other staff to communicate to patients in the language primarily used by them.

(9) Education activities shall relate, in part, to the findings as quality assurance activities and shall include cardiopulmonary resuscitation training.

§135.8. Quality Assurance in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) Quality assurance includes the selection of professional personnel prior to engagement for service, ongoing review of clinical responsibilities and authority, and peer review and supervision of all professional and technical activities of personnel.

(2) The professional and administrative staff shall understand, support, and participate in the quality assurance program.

(3) The quality assurance program shall address clinical, administrative, and cost effective issues. Exclusive concentration on administrative cost effective issues does not fulfill this requirement.

(4) Quality assurance activities shall be conducted by the quality assurance committee, which is composed of specific clinical disciplines within the ASC (individual medical specialties, nursing, etc.) and shall be consistent with the characteristics of the overall quality assurance program.

(5) Problem identification and resolution activities shall be conducted as part of an ongoing, organized quality assurance program in which all practitioners in all clinical disciplines have an opportunity to participate. A variety of self-assessment methodologies shall be used to implement the quality assurance program. Assessment techniques shall examine the structure, process, or outcome of care, and shall be assessed prospectively, concurrently, or retrospectively.

(6) Quality assurance activities shall address the following.

(A) Important problems or concerns in the care of patients shall be identified. Although the medical record is an important data source for identifying previously unrecognized problems, any sources may be used. Problems concerning accessibility, medical-legal issues, and wasteful practices shall be considered, as well as concerns previously recognized by patients and staff but inadequately addressed.

(B) The frequency, severity, and source of suspected problems or concerns shall be assessed.

(i) Health care practitioners shall participate in the development and application of the criteria used to evaluate the care they provide.

(ii) Health care practitioners shall participate in the evaluation of the problems or concerns identified.

(C) Measures shall be implemented to resolve important problems or concerns that have been identified. Health care practitioners as well as administrative staff shall participate in the resolution of the problems or concerns that are identified.

(D) The problems or concerns shall be reassessed to determine objectively whether or not the measures have achieved and sustained the desired result, and if not, why not.

(E) Through the ASC's designated mechanisms, quality assurance activities shall be reported, as appropriate, to the proper personnel, and the governing body.

(7) Quality assurance activities described in paragraph (6) of this section shall encompass, but are not limited to:

(A) the clinical performance of health care practitioners;

(B) the standards for medical records;

(C) quality controls for and the use of radiology, pathology, and medical

laboratory services;

(D) other professional and technical services provided; and

(E) studies of patient satisfaction.

(8) The quality assurance program shall be a well-defined organized program designed to enhance patient care through the ongoing objective assessment of important aspects of patient care and the associated or identified problems. The responsibilities for quality assurance activities shall be clearly delineated.

(A) Qualified medical staff shall participate in assessment of medical services by health care practitioners and shall be accomplished by a specified member(s) of the medical staff or by staff as a group.

(B) Nursing service shall be represented by one or more qualified registered nurses in quality assurance activities.

§135.9. Medical Records in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) The ASC shall develop and maintain a system for the collection, processing, maintenance, storage, retrieval, and distribution of patient medical records.

(2) An individual medical record shall be established for each person receiving care.

(3) All clinical information relevant to a patient shall be readily available to health care practitioners.

(4) Except when otherwise required by law, any record that contains clinical, social, financial, or other data on a patient shall be strictly confidential and shall be protected from loss, tampering, alteration, destruction, and unauthorized or inadvertent disclosure.

(5) A person shall be designated to be in charge of medical records whose responsibilities include, but are not limited to:

(A) the confidentiality, security, and safe storage of medical records;

(B) the timely retrieval of individual medical records upon request;

(C) the specific identification of each patient's medical record;

(D) the supervision of the collection, processing, maintenance, storage, retrieval, and distribution of medical records; and

(E) the maintenance of a predetermined organized medical record format.

(6) Policies concerning medical records shall address, but are not limited to:

(A) the retention of active records;

(B) the retirement of inactive medical records;

(C) the timely entry of data in medical records; and

(D) the release of information contained in medical records.

(7) Except when otherwise required by law, the content and format of medical records, including the sequence of information, shall be uniform.

(8) Reports, histories and physicals, progress notes, and other patient information (such as laboratory reports, x-ray readings, and consultation) shall be incorporated into the medical record in a timely manner.

(9) Medical records shall be available to authorized health care practitioners any time the ASC is open to patients.

(10) The ambulatory surgical center record shall include the following:

(A) patient identification;

(B) allergies and untoward reactions to drugs recorded in a prominent and uniform location;

(C) significant medical history and results of physical examination;

(D) pre-op diagnostic studies entered before surgery if required by policy or ordered by a physician;

(E) findings and techniques of the operation (operative report);

(F) pathology report on all tissues removed during surgery except those exempted by the governing body;

(G) anesthesia administration record that includes either general or local anesthetic;

(H) documentation of a properly executed informed consent;

(I) evidence of evaluation of the patient by a physician prior to dismissal; and

(J) evidence that the patient was dismissed in the company of a responsible adult unless the physician writes an order that the patient may be dismissed without the company of a responsible adult.

(11) Significant medical advice given to a patient by telephone shall be entered in the patient's medical record and appropriately signed or initialed.

(12) Entries in patients' medical records shall be legible to clinical personnel and shall be accurate and completed promptly.

(12) Any notation in a patient's medical record indicating diagnostic or therapeutic intervention as part of clinical research shall be clearly contrasted with entries regarding the provision of nonresearch related care.

(14) When necessary for assuring continuity of care, summaries of records of a patient who was treated elsewhere (such as by another physician, hospital, ambulatory surgical center, nursing home, or consultant) shall be obtained.

(15) When necessary for assuring continuity of care, summaries or photocopies of the patient's record shall be transferred to the health care practitioner to whom the patient was referred and, if appropriate, to the facility where future care will be rendered.

(16) Certain repetitive procedures are suitable for preprinted operative notes. These operative notes are suitable as long as they are approved by the governing body and signed by the surgeon and transmitted to a knowledgeable reader the events of the surgical procedure.

(17) A physician's signature stamp

may be used for pathology and x-ray reports in accordance with the following regulations.

(A) The physician using the signature stamp shall supply the ambulatory surgical center with a letter, to be kept on file, notifying the ambulatory surgical center of the use of the stamp.

(B) The signature stamp shall be in the possession of the physician at all times, or shall be locked up with the key in the physician's possession.

(C) No one but the physician shall use the signature stamp.

(D) When a signature stamp is used, the physician shall initial the signature stamp as it is used.

(18) All final tissue and abnormal cytology reports shall be signed by a pathologist.

§135.10. Facilities and Environment in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) The ASC shall have the necessary personnel, equipment, and procedures to handle medical emergencies that may arise in connection with services sought or provided. At a minimum the ASC shall provide:

(A) periodic instruction of all personnel in the proper use of safety, emergency, and fire extinguishing equipment;

(B) procedures, including adequate surveillance techniques, that minimize sources and transmission of infections;

(C) a comprehensive emergency plan to address internal and external emergencies, including:

(i) a provision for the safe evacuation of patients during an internal emergency, especially patients who have difficulty walking;

(ii) a provision for the most efficient use of available facilities and services during an external emergency; and

(iii) a requirement for at least two drills a year of the internal emergency plan; and

(D) personnel trained in cardiopulmonary resuscitation and the use of emergency equipment present in the facility during hours of operation.

(2) Hazards that might lead to slipping, falling, electrical shock, burns, poisoning, or other trauma shall be eliminated.

(3) Facilities shall be clean and properly maintained.

(4) Appropriate emergency equipment and supplies shall be maintained and readily accessible to all areas of each building and shall include the following:

(A) emergency call system;

(B) oxygen;

(C) mechanical ventilatory assistance equipment, including airways, manual breathing bag, and ventilator;

(D) cardiac defibrillator;

(E) cardiac monitoring equipment;

(F) chest tubes and bottle;

(G) tracheostomy set;

(H) laryngoscopes and endotracheal tubes;

(I) suction equipment; and

(J) emergency drugs and supplies specified by the medical staff.

(5) All equipment, including emergency equipment, shall be properly maintained and periodically tested.

(6) There shall be a system for the proper identification, management, handling, transport, treatment, and disposition of hazardous materials and wastes whether solid, liquid, or gas.

(A) This system shall include, but is not limited to, infectious, radioactive, chemical, and physical hazards.

(B) The system shall provide for the protection of patients, staff, and the environment.

(7) The method of disposal for infectious and/or pathological wastes shall be incineration.

(8) If incineration is not feasible, the alternative method shall be treatment of the waste in an autoclave—steam sterilization—to destroy the pathogens, followed by the burial of the sterilized material in a permitted landfill.

(9) When methods of incineration or high pressure steam sterilization are not feasible, infectious and/or pathological wastes shall be disposed of in a Type I municipal landfill. This procedure, set forth in Municipal Solid Waste Management Regulations (MSWMR), §325.136(b)(1) of this title (relating to Disposal of Special Wastes), is intended for use only under the following conditions:

(A) when an incinerator is shut down for repair or has been closed because of regulations promulgated pursuant to clean air statutes;

(B) when individual pieces of waste are too large for existing incinerators or autoclaves; or

(C) when the composition of contaminated items, such as plastic bottles, bags, tubing, etc., could be deleterious to the operation of the incinerator or autoclave.

(10) An acceptable procedure for depositing infectious or pathological wastes in a Type I landfill is as follows according to MSWMR, §325.136(b)(1) of this title (relating to Disposal of Special Wastes):

(A) The waste shall be double bagged in plastic bags not less than 1.5 mil thick. Each bag must be conspicuously marked.

(B) The bags must not be commingled with other wastes; don't put in dumpster.

(C) The landfill operator must be notified the day before a deposit is delivered.

(D) The deposit must be special delivered to the landfill operator early in the morning.

(E) The landfill operator must bury the waste material immediately.

(11) An acceptable procedure for depositing infectious and pathological waste

when a landfill is not available shall be as follows according to MSWMR, §325.136(b)

(1) of this title (relating to Disposal of Special Wastes):

(A) In a remote location, have a three foot (diameter) bore hole or pit dug which is deep enough to accommodate several deposits.

(B) Place autoclaved and appropriately bagged waste (same as paragraph (10)(A) and (B) of this section) into the bottom of the hole or pit.

(C) Sprinkle one large bag of lime over the entire bottom.

(D) Cover with one foot of dirt.

(E) Repeat the process until there is only room for two feet of clean dirt on top.

(12) Sufficient space, equipment, and supplies shall be provided to perform the volume of work with optimal accuracy, precision, efficiency, and safety in the laboratory and x-ray.

(A) Work space may be located in the pre-op area or in a separate room. The work space shall contain laboratory work counter(s), with a sink and electric services, storage cabinet(s) or closet(s).

(B) There shall be work space available for specimen collections. Urine collection rooms shall be equipped with a water closet and lavatory. Blood collection area shall have space for a chair, work counter, and hand wash facilities.

(C) The ASC shall furnish equipment for basic diagnostic purposes, depending on the extent of services provided.

(i) If fluoroscopic procedures are part of the program, a toilet room with hand washing facilities directly accessible from each fluoroscopy room without entering the general corridor shall be provided;

(ii) Dressing area(s) shall be required, depending on services provided, with convenient access to toilets and may be shared with patient changing/preop rooms.

§135.11. Anesthesia and Surgical Services in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) Anesthesia services provided in the ASC shall be limited to those techniques that are approved by the governing body upon the recommendation of qualified medical personnel.

(2) Adequate supervision of anesthesia services provided by the ASC shall be the responsibility of one or more qualified physicians who are approved by the governing body upon the recommendation of qualified medical personnel.

(3) Anesthesia shall be administered by anesthesiologists, other qualified physician or dentist anesthetists, qualified certified registered nurse anesthetists, or supervised trainees in an approved educational program.

(4) A person qualified to provide anesthesia services shall be available as long as clinically indicated.

(5) Policies and procedures shall be developed for anesthesia services which include, but are not limited to:

(A) education, training, and supervision of personnel;

(B) responsibilities of non-physician anesthetists;

(C) responsibilities of supervising physicians; and

(D) use and degree of supplemented local anesthesia.

(6) Anesthesia shall not be administered unless the operating surgeon or anesthesiologist has evaluated the patient immediately prior to surgery to assess the risk of the anesthesia relative to the surgical procedure to be performed.

(7) Patients who have received anesthesia shall be evaluated by the operating surgeon or anesthesiologist after recovery from anesthesia and prior to discharge.

(8) Surgical procedures performed in the ASC shall be limited to those procedures that are approved by the governing body upon the recommendation of qualified medical personnel.

(9) Adequate supervision of surgery conducted in the ASC shall be a responsibility of the governing body, shall be recommended by qualified medical personnel, and shall be provided by appropriate personnel.

(10) Surgical procedures shall be performed only by health care practitioners who are licensed to perform such procedures within Texas and who have been granted privileges to perform those procedures by the governing body of the ASC, upon the recommendation of qualified medical personnel and after medical review of the practitioner's documented education, training, experience, and current competence.

(11) Surgical procedures to be performed in an office surgical practice shall be reviewed periodically as part of the peer review portion of the ASC's quality assurance program.

(12) An appropriate history, physical examination, and pertinent preoperative diagnostic studies shall be incorporated into the patient's medical record prior to surgery.

(13) The necessity or appropriateness of the proposed surgery, as well as any available alternative treatment techniques, shall be discussed with the patient prior to scheduling for surgery.

(14) Nurses and other personnel assisting in the provision of surgical services shall be appropriately trained and supervised and shall be available in sufficient numbers for the surgical care provided.

(15) Each operating room shall be designed and equipped so that the types of surgery conducted can be performed in a manner that protects the lives and assures the physical safety of all persons in the area. At least one operating room shall be available for surgery.

(A) If flammable agents are present in an operating room, the room shall

be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 56A, Standard for the Use of Inhalation Anesthetics, Flammable, and Nonflammable, 1978) and with applicable state and local fire codes.

(B) If nonflammable agents are present in an operating room, the room shall be constructed and equipped in compliance with standards established by the National Fire Protection Association (NFPA 56G, Standard for Inhalation Anesthetics in Ambulatory Care Facilities, 1980) and with applicable state and local fire codes.

(16) An anesthesiologist or another physician qualified in resuscitative techniques shall be present or immediately available until all patients operated on that day have been discharged.

(17) With the exception of those tissues exempted by the governing body after medical review, tissues removed during surgery shall be examined by a pathologist, whose signed report of the examination shall be made a part of the patient's medical record.

(18) The findings and techniques of an operation shall be accurately and completely written or dictated immediately after the procedure by the health care practitioner who performed the operation. This description shall be immediately available to the health care practitioners providing patient care and becomes a part of the patient's medical record.

(19) A safe environment for treating surgical patients, including adequate safeguards to protect the patient from cross-infection, shall be assured through the provision of adequate space, equipment, and personnel.

(A) Provisions shall be made for the isolation or immediate transfer of patients with communicable diseases.

(B) All persons entering operating rooms shall be properly attired.

(C) Acceptable aseptic techniques shall be used by all persons in the surgical area.

(D) Only authorized persons shall be allowed in the surgical area.

(E) Suitable equipment for rapid and routine sterilization shall be available to assure that operating room materials are sterile.

(F) Sterilized materials shall be packaged and labeled in a consistent manner to maintain sterility and identify sterility dates.

(G) Environmental controls shall be implemented to assure a safe and sanitary environment.

(H) Suitable equipment shall be provided for the regular cleaning of all interior surfaces.

(I) Operating rooms shall be appropriately cleaned before each operation.

(20) Procedures shall be developed for obtaining blood or blood products on a timely basis.

(21) Emergency power adequate for the type of surgery performed shall be available in operative and recovery areas.

(22) Periodic calibration and/or preventive maintenance of equipment shall be provided.

(23) The informed consent of the patient or, if applicable, of the patient's representative shall be obtained before an operation is performed.

(24) A procedure shall be established for observation and care of the patient during the preoperative preparation and post-operative recovery period.

(25) Protocols shall be established for instructing patients in self-care after surgery, including written instructions to be given to patients who receive regional and general anesthesia.

(26) Patients who have received anesthesia, except unsupplemented local anesthesia, shall only be discharged in the company of a responsible adult.

(a) The ASC shall provide drugs and biologicals in a safe and effective manner in accordance with professional practices and shall be in compliance with all state and federal laws and regulations. The ASC shall be licensed as required by the State Board of Pharmacy.

(b) Pharmaceutical services may be made available by the ASC through a contractual agreement and must be provided in accordance with the same ethical and professional practices and legal requirements that would be required if such services were provided directly by the ASC.

§135.13. Pathology and Medical Laboratory Services in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following. Pathological and clinical services shall be provided or made available when appropriate to meet the needs of the patients and adequately support the ASC's clinical capabilities.

(1) Pathology and clinical laboratory services shall include, but are not limited to:

(A) conducting laboratory procedures that are appropriate to the needs of the patients;

(B) performing tests in a timely manner;

(C) distributing test results within 24 hours after completion of a test and maintaining a copy of the results in the laboratory; and

(D) performing and documenting appropriate quality assurance procedures, including, but not limited to, calibrating equipment periodically and validating test results through use of standardized control specimens or laboratories.

(2) Preoperative laboratory procedures may be required as follows.

(A) It shall be at the discretion of the ASC to require preoperative laboratory orders.

(B) If specific preoperative laboratory work is required, the medical staff shall approve them in accordance with the medical staff by-laws. Other lab work shall be performed only upon the written order of a physician or dentist and written on the patient's chart.

(C) These services shall be provided either directly within or through an effective contract arrangement with a Medicare-approved reference laboratory.

(D) The contractual agreement with the Medicare-approved reference laboratory shall provide for routine and stat work to include pathology, clinical, and blood bank services, and shall be available for review.

(3) The patient may be instructed to go directly to the Medicare-approved reference laboratory or the specimen may be collected on the ambulatory surgical center's premises and then referred to the Medicare-approved reference laboratory.

(4) If the specimens are collected on the premises only, the following shall be maintained:

(A) procedures and policies governing the Medicare reference laboratory specimen requirements; identifying, collection, labeling, storage and transportation of the specimen, and preventive maintenance of equipment used in processing and storage of specimen;

(B) a log book which shall include patient name and identification number, doctor's name, date the specimen was drawn and sent to the Medicare approved reference laboratory, laboratory tests ordered, date the final report came back from the reference laboratory, and condition of the specimen. The final report shall be on the patient chart, with copies kept in the ASC's laboratory.

(5) If laboratory tests are performed on the premises the following shall be maintained:

(A) procedures governing identification, collection, labeling, and storage of specimens;

(B) a log book which shall include patient name and identification number, doctor's name, date the specimen was drawn, test ordered, and results;

(C) procedures for each test procedure performed by the laboratory, including source of reagents, standards, and calibration procedures, and information concerning the basis for the tested normal ranges;

(D) procedures and documentation of performed maintenance on equipment used to process laboratory work;

(E) dated reports of all examinations performed and made a part of the patient's medical record; and

(F) proficiency testing.

(6) Quality control of the laboratory shall be monitored through the quality assurance committee.

(7) If the ASC designates its laboratory to perform as an independent laboratory, it shall be surveyed according to 42

Code of Federal Regulations, Part 405, Subpart M, §§405.1310-405.1317.

(8) The ASC's reference number can allow laboratory work to be performed and brought in from other Medicare-approved reference laboratories or physicians' offices and the following shall be maintained.

(A) Written criteria describing the length of time tests can be done prior to surgery shall be maintained. (In no case shall lab work be performed more than 14 days prior to surgery for local anesthesia, or seven days for general anesthesia.)

(B) Final reports shall be on the patient's chart before surgery.

(C) Laboratory work shall be performed in a Medicare-approved reference laboratory or the patient's physician's office. This shall be written in a policy accepted by the medical staff and governing body.

(9) Policies shall be developed on administration of blood transfusions to include autologous blood units in accordance with the ASC's operative procedures.

(A) If the operative procedure(s) performed in the ASC (i.e., cataract surgery) does not indicate the necessity for a transfusion, the approved procedures must reflect this and be approved by the medical staff and governing body with ultimate responsibility accepted by the governing body.

(B) If the operative procedure(s) performed in the ASC requires or may require the necessity for transfusions, policies and procedures shall include provisions for stat and routine transfusions. These policies and procedures shall include but are not limited to collection, labeling, and transportation of specimen in accordance with the ASC or contract service policies. All patient results shall appear in the patient's chart.

(10) If the ASC performs surgery which incorporates the removal of a tissue specimen or the freezing of a tissue specimen, the specimen shall be submitted to a Medicare-approved reference laboratory. The following shall be maintained:

(A) procedures governing the Medicare-approved reference laboratory specimen requirements, identification, collection, labeling, storage, and transportation of the specimen;

(B) documentation to include patient name and identification number, doctor's name, date the tissue specimen was collected and referred to the Medicare-approved reference laboratory, and date the final report came back from the Medicare-approved reference laboratory. Final copies shall be placed in the patient's chart, with copies kept in the ASC; and

(C) the medical staff by-laws may exempt tissue specimens from pathology exam and the list of exemptions shall be available for review. The exemptions shall be based on the following criteria.

(i) The quality of care shall not be compromised and another suitable means of verification of removal shall be employed.

(ii) The authentic operative report shall document the removal of the tissue specimen.

(iii) The exemptions may include limited categories such as foreign bodies, teeth, and specimens which by nature or condition do not permit fruitful examination.

(11) The medical staff by-laws shall define those specimens for macroscopic pathology examination only and both macroscopic and microscopic pathology examinations.

(12) The original pathology report shall be included in the patient's chart.

(13) Pathology tissue reports and positive cytology reports shall have the written signature of the pathologist interpreting the report. A computerized signature or signature stamp cannot be used.

§135.14. *Radiology Services in a Licensed ASC.* ASCs that do not participate under Title XVIII shall comply with the following.

(1) Radiology services shall be provided or made available when appropriate to meet the needs of the patients and adequately support the ASC's clinical capabilities. Policy and procedures shall be available for emergency and/or routine radiological procedures.

(2) A radiologist shall authenticate all examination reports, except reports of specific procedures that may be authenticated by physicians who are not radiologists but who have been granted privileges by the governing body or its designee to authenticate such reports.

(3) Services shall be provided either directly within or through an effective contractual arrangement with a Medicare-approved facility and the contracts shall be available for review.

(A) If services are provided through contractual arrangement, the ASC may instruct its patients to go directly to the facility for x-ray service.

(B) If services are provided by an outside x-ray firm coming into the ASC, this portable x-ray firm must be Medicare-certified according to 42 Code of Federal Regulations Part 405, Subpart N, §§405.1411-405.1416.

(4) If x-ray services are performed within the ASC, the x-ray department will be surveyed according to 42 Code of Federal Regulations Part 405, Subpart J, §405.1029.

(5) Procedure manuals shall include procedures for all examinations performed, infection control in the ASC and operating rooms to include dress code of personnel and cleaning of equipment.

(6) Policies shall address the quality aspects of radiology services, including, but not limited to:

(A) performing radiology services only upon the written order of a physician or dentist (such orders must be accompanied by a concise statement of the reason for the examination) A written order is required if

the x-ray procedure is an integral part of the patient's surgery; and

(B) limiting the use of any radioactive sources in the ASC to physicians who have been granted privileges for such use on the basis of their training, experience, and current competence.

(7) Policies shall address the safety aspects of radiology services, including, but not limited to:

(A) regulation of the use, removal, handling, and storage of any radioactive material which is required to be licensed by the Texas Department of Health, Bureau of Radiation Control;

(B) precautions against electrical, mechanical, and radiation hazards;

(C) proper shielding where radiation sources are used;

(D) acceptable monitoring devices for all personnel who might be exposed to radiation (monitoring devices shall be worn by such personnel in any area with a radiation hazard);

(E) maintenance of radiation exposure records on personnel; and

(F) authenticated, dated reports of all examinations performed shall be made a part of the patient's medical record.

(8) Laser equipment shall be licensed as required by the Texas Department of Health, Bureau of Radiation Control.

§135.15. Nursing Services in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) There shall be an organized nursing service under the direction of a qualified registered nurse and staffed to assure that the nursing needs of all patients are met.

(2) There shall be a plan of administrative authority for all nursing services with responsibilities and duties of each category of nursing personnel delineated and a written job description for each category. The scope of nursing service shall include, but is not limited to, nursing care rendered to patients preoperatively, intraoperatively, and postoperatively.

(A) The responsible individual for nursing services shall be a qualified registered nurse whose responsibility and authority for nursing service shall be clearly defined and includes supervision of both personnel performance and patient care.

(B) There shall be a written delineation of functions, qualifications, and patient care responsibilities for all categories of nursing personnel.

(C) Surgical technicians and licensed vocational nurses may be permitted to serve as scrub nurses under the direct supervision of a registered nurse; they shall not be permitted to function as circulating nurses in the operating rooms unless there are an adequate number of registered nurses available to supervise.

(D) Nursing services shall be provided in accordance with current recognized standards or recommended practices.

(3) There shall be an adequate number of registered nurses on duty to meet the following minimum staff requirements: director of the department (or designee), and supervisory and staff personnel for each service area to assure the immediate availability of a registered nurse for emergency care or for any patient when needed.

(A) A registered nurse shall assign the nursing care of each patient to other nursing personnel in accordance with the patient's needs and the preparation and qualifications of the nursing staff available.

(B) There shall be other nursing personnel in sufficient numbers to provide nursing care not requiring the service of a registered nurse.

§135.16. Other Professional and Technical Services in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) Such services may include, but are not limited to, various medical specialties, i.e., audiology, dentistry, health education, nursing, nutrition, occupational therapy, optical services, physical therapy, psychology, social work, and speech therapy.

(2) Such services provided or made available must be appropriate to the needs of the patients and adequately support the ASC's clinical capabilities.

(3) Such services shall be provided in accordance with ethical and professional practices and applicable federal and state laws and regulations.

(4) Such services shall be evaluated by using applicable standards from other sections of these sections.

§135.17. Teaching and Publication Activities in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) Policies concerning teaching activities shall address:

(A) the terms and conditions of reimbursement or other compensation;

(B) the reasonableness of the time spent away from direct patient care and administrative activities; and

(C) the training of all students and postgraduate trainees, including the extent of their involvement in patient care activities.

(2) The policy concerning the provision of health care by personnel in any student or postgraduate trainee status shall provide for close and adequate supervision and for informing the patient of the status of the provider.

(3) Policies concerning publishing activities shall address:

(A) the need for governing body approval when the views, policies, and procedures expressed in the publication are attributed to the ASC; and

(B) the terms and conditions of compensation from publication and the cost of publication.

§135.18. Research Activities in a Licensed ASC. ASCs that do not participate under Title XVIII shall comply with the following.

(1) Research activities shall be performed in accordance with ethical and professional practices and legal requirements, and these activities shall be periodically monitored.

(2) The protocols for conducting research shall be approved by the governing body or its designee after medical and legal review.

(3) Any research activities carried out within the ASC shall be appropriate to the expertise of staff and the resources in the ASC.

(4) Individuals engaged in research shall be provided with adequate facilities.

(5) Provisions shall be made to assure that the rights and welfare of all research subjects are adequately protected and that the informed consent of the subject, in the language spoken by him or her, is obtained by adequate and appropriate methods.

(6) All professional staff shall be informed of the ASC's research policies.

§135.19. Unlicensed Ambulatory Surgical Center.

(a) If the director has reason to believe that a person or facility may be providing ambulatory surgical services without a license as required by the Act, the person or facility shall be so notified in writing by certified mail, return receipt requested, and shall submit to the department the following information within 10 days of receipt of the notice.

(1) an application for a license and the license fee, which is nonrefundable;

(2) a claim for exemption under §135.20 of this title (relating to Exemptions); or

(3) any and all documentation necessary to establish that ambulatory surgical services are not being provided. Documentation shall include a notarized statement attesting to the fact that ambulatory surgical services are not provided and a statement of the type(s) of service(s) that are provided.

(b) If the person or facility has submitted an application for a license, the application will be processed in accordance with §135.21 of this title (relating to Application and Issuance of License for Initial Applicants).

(c) If the person or facility submits a claim for exemption, the exemption claim will be processed in accordance with §135.20 of this title (relating to Exemptions).

(d) If the person or facility submits sufficient documentation to establish that ambulatory surgical services are not provided, the director shall so notify the person or facility in writing within 30 days that no license is required. If the documentation submitted is determined to be insufficient by the director, the person or facility shall be so notified in writing and shall have 10 days to respond. Following receipt of the response, if any, the director shall then notify the per-

son or facility in writing within 10 days of the determination.

(e) If a person or facility fails to respond as required by subsections (a) and (d) of this section, the provisions of §135.25(e) and (g) of this title (relating to License Denial, Suspension, or Revocation) will govern.

§135.20. Exemptions.

(a) The following facilities are not required to be licensed under the Act:

- (1) an office or clinic of a licensed physician, dentist, or podiatrist;
- (2) a licensed nursing home; or
- (3) a licensed hospital.

(b) If a person or facility is uncertain about whether or not licensing under the Act is required, a written claim for exemption, including all documentation supporting the exemption claim, may be submitted to the department.

(c) The director shall evaluate the claim for exemption and notify the person or facility in writing of the proposed decision within 90 days following receipt of the claim for exemption.

(d) If the proposed decision is to grant the claim for exemption, the department will provide written notice according to subsection (c) of this section.

(e) If the claim for exemption is proposed to be denied, the person or facility so affected shall have the right to appeal the determination to the director by written letter with the reasons supporting exemption within 10 days following receipt of the proposed denial.

(f) If the person or facility does not request an appeal as provided in subsection (e) of this section, the right to appeal is deemed to be waived and the denial of the exemption becomes final 30 days following the person or facility's receipt of the proposed denial.

(g) The person or facility must submit a completed application and nonrefundable licensing fee to the department within 10 days following the final denial of exemption.

(h) In the event that a person or facility does not comply as required by subsection (g) of this section, the provisions of §135.25(e) and (f) of this title (relating to License Denial, Suspension, or Revocation) will govern.

§135.21. Application and Issuance of License for Initial Applicants.

(a) All first-time applications for licensing, including those from unlicensed operating ASCs and licensed ASCs for which a change of ownership is anticipated, are applications for a temporary license. The application for a temporary license is also an application for the first annual license.

(b) Upon written request, the director shall furnish a person with an application form for an ASC license. The applicant shall submit to the director a completed original application and the nonrefundable license fee.

- (1) The applicant shall provide:

(A) the name and address of the owner of the ASC or a list of names and addresses of persons who own an interest in the ASC;

(B) the name, Texas license number, and license expiration date of the medical chief of staff;

(C) the number of physicians, dentists, and/or podiatrists on staff at the ASC;

(D) the name, Texas license number, and license expiration date of the director of nursing of the ASC; and

(E) whether the ASC has applied for certification under Title XVIII of the Social Security Act.

(2) Upon receipt of the application, the director shall review the application to determine whether it is complete. All documents submitted to the department must be originals. The address provided on the application must be the address at which the ASC is operating.

(3) If the director determines that the application for an unlicensed ASC is complete and correct, a representative of the department shall schedule a presurvey conference with the applicant in order to inform the applicant of the standards for the operation of the ASC. A presurvey conference, may at the department's discretion, be waived for an applicant of a licensed ASC for which a change of ownership is anticipated.

(4) After a presurvey conference has been held or waived at the department's discretion, the department may issue a temporary license to an ASC to provide ambulatory surgical services in accordance with these sections. The temporary license is valid for six months from the date of issuance, unless revoked by the department, and is not renewable. The director shall send the temporary license to the licensee with a cover letter which includes:

(A) statement that compliance with either the conditions of participation under Title XVIII or minimum standards in accordance with these sections is required during the temporary licensing period in order for an annual license to be issued;

(B) a statement that a surveyor from the department will inspect the ASC prior to the issuance of the first annual license; and

(C) a statement that the ASC shall comply with §135.24 of this title (relating to Conditions of Annual License).

(5) A department surveyor shall inspect the ASC within 90 days after the issuance of the temporary license. An on-site inspection may, at the department's discretion, be waived for previously licensed ASC's for which a change of ownership has occurred.

(6) The first annual license shall be issued to an ASC which meets either the conditions of participation under Title XVIII or the minimum standards for a license in accordance with these sections as determined after an inspection.

(7) If the department determines that an on-site inspection of a licensed ASC which has undergone a change of ownership is not required, the first annual license shall be issued within 90 days after the issuance of the temporary license.

(8) The first annual license supersedes the temporary license and shall expire one year from the date of issuance of the temporary license.

(9) If an ASC that is not participating in the Title XVIII Program is determined not to be in compliance with minimum standards for a license in accordance with these sections after an inspection, the ASC shall come into compliance no later than 30 days prior to the expiration of the temporary license. If the ASC is determined not to be in compliance with minimum standards for licensure in accordance with these sections following a second on-site inspection or mail investigation, 30 days prior to the expiration date of the temporary license, the ASC shall be notified of the proposed denial of the first annual license in accordance with §135.25 of this title (relating to License Denial, Suspension, or Revocation)

(10) If an applicant decides not to proceed with an application for an annual license, the application must be withdrawn by written request. If a temporary or annual license has already been issued to an applicant who has decided to withdraw, the applicant shall return the license to the director with a written request to withdraw. The director shall acknowledge receipt of the request to withdraw.

§135.22. Inspections.

(a) The department shall conduct an initial on-site inspection to determine if either the federal conditions of participation under Title XVIII or the standards for licensing set forth in these sections are being met. Prior to an inspection, the surveyor shall notify the applicant in writing of the date and time of the inspection. The department will evaluate the ASC on a standard-by-standard basis before the first annual license is issued, unless waived in accordance with §135.21 (b)(7) of this title (relating to application and issuance of license for initial applicants). An on-site inspection for ASCs that are not participating in the Title XVIII Program may be conducted for license renewal. An on-site inspection may be conducted if a change of ownership of a licensed ASC has occurred, if the ASC has not demonstrated compliance with standards, or if complaints against an ASC have been received by the department.

(b) If an on-site inspection is conducted at an ASC that is not participating under the Title XVIII program, and deficiencies are cited, the surveyor shall request the applicant or person in charge to sign the statement of deficiencies as an acknowledgement of receipt of a copy of the statement of deficiencies. Signing the statement of deficiencies does not indicate agreement with any deficiencies. If the applicant or person in

charge declines to sign the form, the surveyor shall note the declination on the statement of deficiencies and the name of the person so declining. The surveyor shall leave a copy of the statement of deficiencies at the ASC and, if the person in charge is not the applicant, mail a copy of the statement of deficiencies to the applicant.

(c) After an inspection is completed, the surveyor shall prepare a survey report which contains the following:

(1) a completed survey report form;

(2) a statement of which standards were evaluated;

(3) a statement of deficiencies, if any, and the signature of the applicant or person in charge;

(4) a plan of correction which has been provided by the ASC and the date(s) by which correction(s) will be made; and

(5) any comments by the applicant or person in charge concerning the survey.

(d) The survey report form shall be submitted as follows.

(1) The surveyor shall submit the survey report to the director for evaluation and decision.

(2) A license shall be issued to an ASC that is in compliance with minimum standards in accordance with these sections at the time of the on-site inspection.

(3) If deficiencies are cited and the plan of correction is acceptable, written notice will be sent to the applicant acknowledging same.

(4) If deficiencies are cited and the plan of correction is not acceptable, the director will notify the applicant in writing and request that the plan of correction be resubmitted. Upon resubmission of the acceptable plan of correction, written notice will be sent to the applicant acknowledging same.

(5) The ASC shall come into compliance at least 30 days prior to the expiration date of the temporary or annual license.

(6) The department shall verify the correction of deficiencies by mail or by an on-site inspection.

(7) If the ASC does not timely come into compliance, the department may propose to deny, suspend, or revoke the existing license in accordance with §135.25 of this title (relating to License Denial, Suspension, or Revocation).

§135.23. *Renewal of Annual License.*

(a) The department will send written notice of expiration of an annual license to an applicant at least 90 days before the expiration date. If the applicant has not received notice, it is the duty of the applicant to notify the department and request a renewal application.

(b) The applicant shall submit to the department a renewal application form and a nonrefundable license fee. Those ASC's not participating in the Title XVIII Program must also submit a self-survey. Those ASC's that are under the Title XVIII Program will

have the ASC's certification verified by the department based upon the results of the current inspection report on file with the department. These documents shall be submitted and postmarked no later than 60 days prior to the expiration date of the license.

(c) The department shall issue a renewal license to a facility which meets either the federal conditions of participation under Title XVIII or the minimum standards for a license set forth in these sections. If an applicant fails to timely submit an application, fee, and self survey in accordance with subsection (b) of this section, the department shall notify the applicant that the ASC must cease providing ambulatory surgical services on the expiration date of the license and immediately thereafter return the license, by certified or registered mail, to the department. If the applicant wishes to provide ambulatory surgical services after the expiration date of the license, the applicant must reapply for an annual license under §135.21 of this title (relating to Application and Issuance of License for Initial Applicants).

§135.24. *Conditions of Annual License.*

(a) No license may be transferred or assigned from one person to another person. If a change of ownership of a licensed ASC is anticipated, in order to ensure continuity of patient services, the department shall be informed in writing and the applicant shall submit a license application and non-refundable fee at least 90 days prior to the change of ownership of each ASC. The procedure shall be handled in accordance with §135.21 of this title (relating to Application and Issuance of License for Initial Applicants), with the exception of the presurvey conference and the on-site inspection unless deemed necessary by the department. A temporary license will be issued for the newly acquired ASC effective on the date the ownership changed. The previous license will be void on the date of acquisition.

(b) No license may be transferred from one ASC location to another without prior written approval from the department. If an ASC is relocating, the ASC shall complete and submit a form provided by the department at least 30 days prior to the intended relocation. The department will provide written notification to the ASC amending the current ASC license to reflect the new location.

(c) Written notice to the department of any change in telephone number must be received within 30 days after the number has changed.

(d) If the name of an ASC is changed the department must be notified in writing within 30 days after the effective date of the name change.

§135.25. *License Denial, Suspension, or Revocation.*

(a) The department may refuse to issue or renew a license for an ASC that does not participate under Title XVIII if the center:

(1) fails to comply with any provisions of the Act or these sections; or

(2) is not in compliance with minimum standards for licensure at least 30 days prior to the expiration date of the temporary or annual license.

(b) The department may suspend the license of an ASC for one or more of the following reasons:

(1) misstatement or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the ASC pursuant to the Act; or

(2) materially altering any license issued by the department.

(c) The department may revoke the license of an ASC for one or more of the following reasons:

(1) an act has been committed by the ASC or its employees which affects the health and safety of a patient;

(2) if an ASC has been cited for deficiencies and fails to submit an acceptable plan of correction in accordance with these sections; or

(3) if an ASC has been cited for deficiencies and fails to timely comply with minimum standards for licensure within the dates designated in the plan of correction.

(d) The department shall refuse to issue or renew a license of an ASC that participates under Title XVIII, if the certifying body, Health Care Financing Administration (HCFA), has terminated that ASC's provider agreement under Title XVIII.

(e) If the director proposes to deny, suspend, or revoke a license, the director shall give the applicant written notification of the reasons for the proposed action and offer the applicant an opportunity for a hearing. The applicant may request a hearing within 30 days after the date the applicant receives notice. The request must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §§1.21-1.32 of this title (relating to formal Hearing Procedures). If a hearing is not requested in writing within 30 days after receiving notice of the proposed action, the applicant is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(f) If the department finds that a violation of the standards or licensing requirements prescribed by the Act creates an immediate threat to the health and safety of patients of an ASC, the department may petition the district court for a temporary restraining order to restrain continuing violations.

(g) If the provisions of Texas Civil Statutes, Articles 6252-13c and 6252-13d, apply to an ASC, any procedures covering the denial, suspension, or revocation of a

license shall be governed by the provisions in those statutes

(h) If a person violates the licensing requirements or the standards prescribed by the Act, the department may petition the district court for an injunction to prohibit the person from continuing the violation or to restrain or prevent the establishment or operation of an ASC without a license issued under the Act.

§135.26. Complaints.

(a) The department or its authorized representative may enter the premises of an ASC during normal business hours as necessary to assure compliance with the Act and these sections. The investigation may be conducted on-site, unannounced or announced, or may be investigated by phone or mail.

(b) All licensed ambulatory surgical centers are required to provide the patient and his/her guardian at time of admission a written statement identifying the department as the responsible agency for ambulatory surgical centers complaint investigations. The statement shall inform persons to direct complaints to Juanita Carrell, R.N., Ed.D., Director, Texas Department of Health, Health Facility Licensure and Certification, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Complaints may be registered with the department by phone or in writing. A complainant may provide his/her name, address, and phone number to the department. Anonymous complaints may be registered. All complaints are confidential.

(c) The department will evaluate all complaints against all ambulatory surgical centers. Only those allegations determined to be relevant to the Act will be authorized for investigation.

(d) Conduct of the investigation will include, but not be limited to:

(1) a conference prior to commencing the on-site inspection for the purpose of explaining the nature and scope of the in-

spection between the department's authorized representative and the person who is in charge of the ambulatory surgical center;

(2) inspection of the ASC;

(3) inspection of medical and personnel records, including administrative files, reports, records or working papers;

(4) an interview with any willing recipient of ambulatory surgical center services at the ASC or in the recipient's home if the recipient grants permission in writing;

(5) an interview with any health care practitioner or ambulatory surgical center personnel who care for the recipient of ambulatory surgical services;

(6) a conference at the conclusion of the inspection between the department's representative and the person who is in charge of the ASC.

(A) The department's representative will identify any records that have been reproduced.

(B) Any records that are removed from an ASC (other than those reproduced) shall be removed only with the consent of the ASC.

(e) The department will review the report of the investigation and determine the validity of the complaint.

(f) Following the on-site inspection for those ASCs that do not participate under Title XVIII, the provisions of §135.22 (b), (c), (d)(1), (d)(3), (d)(4), (d)(6), and (d)(7) of this title (relating to Inspections) will apply.

§135.27. Reporting of Incidents.

(a) Certain situations and incidents that occur in an ambulatory surgical center shall be reported directly to the department.

(b) Upon learning of the incident, the ambulatory surgical center shall report the incident to the Texas Department of Health in Austin immediately by telephone. A written letter of explanation with supporting documents must be mailed to the department within five days of the initial phone contact.

(c) Reportable incidents include the following.

(1) Complications that result in the death of a patient must be reported immediately by phone to the director, but no later than two business days after the incident.

(2) Complications that result in immediate transfer of a patient to a hospital from the ambulatory surgical center must be reported

(3) Any attempted robbery, armed robbery, theft of drugs, and/or diversion of controlled drugs shall be reported to the local police agency and the Texas Department of Health.

(4) Reports of any fire or other damage sustained at the ASC must be reported.

§135.28. Confidentiality. Requests for information and access to records are governed by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

(1) A written request for information is required. The request must sufficiently identify the information requested.

(2) The Department may ask for a clarification if it cannot reasonably understand a particular request.

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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Robert A MacLean
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Professional Services
Texas Department of
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For further information, please call
(512) 458-7245

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**General Construction
Requirements for
Ambulatory Surgical Centers**

★ 25 TAC §§135.41-135.43

The new sections are proposed under Texas Civil Statutes, Article 4437f-2, §3, which

authorize the Texas Board of Health to adopt rules covering ambulatory surgical centers.

§135.41. Location. This facility may be a distinct separate department operated by an existing hospital, it may be located in a separate free standing structure, or it may be located within an office building.

§135.42. Services.

(a) Ambulatory surgical centers (ASC) shall contain, but not be limited to, all the elements described herein, or the policies shall indicate the manner in which the services are to be made to the outpatient.

(b) The elements of an ambulatory surgical center shall be located and arranged

to preclude unrelated traffic through the suite, to separate patient traffic from staff and material handling traffic.

(c) Facilities shall be available and accessible to the physically handicapped (public, staff, and patients). See §135.61(a)(2) of this title (relating to Application of Standards.)

(d) The design of the facility shall provide for the privacy and dignity of the patient during interview, examination, treatment, and recovery.

§135.43. Codes and Standards.

(a) Generally the following codes and standards are part of §135.51 and §135.52 of this title (relating to Existing Ambulatory Surgical Centers) and §§135.61-135.67 of this title (relating to New Construction Requirements for Ambulatory Surgical Centers) only when referenced in the sections. Existing ASCs which do not comply with the codes and standards may continue to provide service, unless replaced or renovated, and provided that the lack of compliance with the codes and standards do not present a serious hazard to the ASC patients.

(1) National Fire Protection Association standards:

(A) NFPA 10—1981, standard for portable fire extinguishers.

(B) NFPA 13—1980, standard for the installation of sprinkler systems.

(C) NFPA 13 A—1981, care and maintenance of sprinkler systems.

(D) NFPA 54—1980, national fuel gas code.

(E) NFPA 56 A—1978, standard for the use of inhalation anesthetics.

(F) NFPA 56 F—1983, standard for fire extinguishing systems.

(G) NFPA 56 K—1980, standard for medical surgical vacuum systems.

(H) NFPA 70—1984, national electric code.

(I) NFPA 72 A—1979, standard for the installation, maintenance, and use of local protective signaling systems for guard's tour, fire alarm, and supervisory service.

(J) NFPA 72 B—1979, standard for installation, maintenance, and use of auxiliary protective signaling systems for fire alarm services.

(K) NFPA 72 C—1982, standard for the installation, maintenance, and use of remote station protective signaling systems.

(L) NFPA 72 D—1979, standard for the installation, maintenance, and use of proprietary protection signaling systems.

(M) NFPA 76 A—1977, essential electrical systems for health care facilities.

(N) NFPA 80—1983, standard for fire doors and windows.

(O) NFPA 82—1983, standard on incinerators waste and linen handling systems and equipment.

(P) NFPA 90 A—1981, installa-

tion of air-conditioning and ventilating systems.

(Q) NFPA 91—1981, standard for the installation of blower and exhaust systems.

(R) NFPA 99—1984, standard for health care facilities.

(S) NFPA 101—1981, code for safety to life from fire in buildings and structures.

(T) NFPA 220—1979, standard for types of building construction and materials.

(U) NFPA 255—1979, method of test of surface burning characteristics of building materials.

(V) NFPA 325 M—1977, fire hazard properties of flammable liquids, gases, and volatile solids.

(W) NFPA 701—1977, standard methods of fire test for flame-resistant textiles and films.

(2) Other referenced standards and codes.

(A) National Association of Plumbing Heating Cooling Contractors (PHCC)—National Standard Plumbing Code, 1983.

(B) ANSI A 17.1, 1978—Safety Code for Elevators, Dumbwaiters, Escalators and Moving Walks; and Supplement ANSI A 17.1a, 1979.

(C) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHREA)—Standard No. 52-76—methods of testing air cleaning devices used in general ventilation for removing particulate matter.

(D) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHREA)—Handbook of Applications, 1978.

(E) American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHREA)—Handbook of Fundamentals, 1977.

(F) American Society for Testing and Materials (ASTM)—Standard No. E 84—1977A—method of test for surface burning characteristic of building materials.

(G) Hydronics Institute (Boiler Ratings)—I = B = R cast iron and SBI steel boilers.

(H) National Council on Radiation Protection (NCRP)—Report No. 49, 1976—medical x-ray and gamma ray protection for energies up to 10 MeV structural shielding design and evaluation.

(I) Underwriters' Laboratories, Inc. (UL)—Standard No. 181, 1974—factory made air duct material and air duct connectors.

(3) Standards of the Texas State Purchasing and General Services Commission. These standards are found in 1 TAC §§115.51-115.62 (relating to Elimination of Architectural Barriers).

(4) Other state, county, and local codes and standards. In addition to complying with the codes and standards described

in paragraphs (1)-(3) of this subsection, ASCs shall comply with any applicable building codes, ordinances, and rules or regulations adopted by any city, county, or other state agency. Compliance with local codes is a prerequisite for licensing of an ASC. In areas not subject of local building codes, an ASC shall comply with one of the following model building codes.

(A) Uniform Building Code—1982: International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(B) Standard Building Code—1984: International, Inc., 900 Montclair Road, Birmingham, Alabama 35213-1206.

(b) Availability of codes and standards. The codes and standards referenced in subsection (a)(1)-(4) of this section may be reviewed in the offices of the Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas. Copies may be purchased from the various agencies listed as follows.

(1) Air Conditioning and Refrigeration Institute, 1815 North Ft. Myer Drive, Arlington, VA 22209.

(2) American National Standards Institute, 1430 Broadway, New York, NY 10018.

(3) American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

(4) American Society of Heating, Refrigerating, and Air-Conditioning, United Engineering Center, 345 East 47th Street, New York, NY 10017.

(5) Compressed Gas Association, 500 Fifth Avenue, New York, NY 10036.

(6) GSA Specification Consumer Information Distribution Branch, Building 197, Washington Navy Yard, Washington, D.C. 20407.

(7) Hydronics Institute, 35 Russo Place, Berkeley Heights, NJ 07922.

(8) National Association of Plumbing-Heating-Cooling Contractors, 1016 20th Street, NW, Washington, D.C. 20036.

(9) National Council on Radiation Protection and Measurement, P.O. Box 30175, Washington, D.C. 20014.

(10) National Fire Protection Association, Inc., Batterymarch Park, Quincy, MA 02210.

(11) Superintendent of Documents, United States Government Printing Office, Washington, D.C. 20407.

(12) Underwriters' Laboratories, Inc., 353 Princeton Road, Northbrook, IL 60062.

(13) State Purchasing and General Services Commission, P. O. Box 13047, Austin, TX 78711.

(14) United States Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, Bureau of Health Maintenance Organizations and Resources Development, Office of Health Facilities, Division of Fa-

cilities Conversion and Utilization, Rockville, MD 20857.

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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Existing Ambulatory Surgical Centers

★25 TAC §135.51, §135.52

The new sections are proposed under Texas Civil Statutes, Article 4437f-2, §3, which authorize the Texas Board of Health to adopt rules covering ambulatory surgical centers.

§135.51. General.

(a) Minimum standards. All existing buildings which provide ambulatory surgical services on an outpatient basis and are licensed by this agency, shall comply with these minimum requirements

(1) An existing building shall meet the requirements for ambulatory surgical centers, NFPA 101 (12-6), and §§135.61-135.67 of this title (relating to New Construction Requirements for Ambulatory Surgical Centers) for other applicable requirements for ambulatory surgical centers.

(2) Structural requirements include all building components, exitways, corridors, stairways, doors, windows, floor and wall finishes.

(3) Patient treatment rooms shall meet the requirements found in §135.64 of this title (relating to Design Requirements).

(4) Handrails shall be kept in good repair and provided on both sides of all stairways over three rises.

(5) All hallways, stairs, and other means of egress shall be adequately lighted and kept free of obstruction at all times in accordance with NFPA 101, life safety code.

(b) Fire prevention and protection.

(1) General safety.

(A) Each ambulatory surgical center shall have a designated safety officer who is knowledgeable in safety practices in health care facilities. The safety officer will be assured of time to carry out the functions of the safety program. The ambulatory surgical center shall have a written safety policy and procedure approved by the governing body and medical staff.

(B) The ambulatory surgical center

shall have written plans for the timely care of casualties arising from both external and internal disasters, and shall document the rehearsal of these plans.

(2) Fire protection. Fire protection shall be provided in accordance with the requirements of NFPA 101 and paragraph (6) of this subsection. Approval of the fire protection of an ambulatory surgical center by the local fire department shall be a prerequisite for licensure.

(3) Smoking regulations.

(A) Each ambulatory surgical center shall establish and regulate a policy for smoking and it shall include the minimal provisions of NFPA 101 (31-4.4.).

(B) No smoking signs shall be posted in the corridors of operating, recovery room suites, and in all other areas where inhalation therapy may be in use. In addition, No smoking signs shall be prominently displayed in areas where flammable liquids or gases are stored and in areas of combustible storage.

(4) Fire extinguisher systems.

(A) All standpipes, sprinkler systems, and other fire-fighting equipment shall be inspected and tested at least once each year and more often if necessary to maintain it in serviceable condition.

(B) Sprinkler systems shall be installed and maintained in accordance with NFPA 13 and 13A.

(5) Portable fire extinguishers. Every portable fire extinguisher maintained in or upon ambulatory surgical center property shall be installed and maintained in accordance with NFPA 10 and NFPA 101. Travel distance to a fire extinguisher shall not exceed 75 feet.

(6) Fire protection and evacuation plan.

(A) Written plan. An approved plan for the protection of patients in the event of fire and their evacuation from the building when necessary shall be formulated. This plan shall be reduced to writing with an evacuation floor plan posted in places conspicuous to patients and staff. All employees shall be instructed and kept informed regarding their duties under the fire protection and evacuation plan.

(B) Annual training. Each ambulatory surgical center shall formulate an annual training program for instruction of all personnel in the use of fire-fighting equipment.

(C) Fire drills.

(i) All personnel shall be familiar with the locations of fire-fighting equipment. There shall be a fire drill of personnel as required by NFPA 101, including the turning in of alarms, simulated evacuation of patients and other occupants, and the use of equipment.

(ii) Fire drills shall be held quarterly.

(D) Fire alarm system. Every ambulatory surgical center shall have an ap-

proved manual fire alarm system.

(i) A dedicated telephone line or other suitable alarm-sending device shall be provided as a means of automatically communicating an alarm of fire to the fire department (or other approved off-site 24-hour monitoring service).

(ii) All fire alarms shall be installed and tested as required by NFPA 101. The fire alarm system shall be installed in accordance with provisions of NFPA 72.

(E) Fire department access. Every ambulatory surgical center, shall meet local fire department access requirements.

(c) Storage and housekeeping.

(1) All storage space shall be kept clean and orderly at all times. No storage shall extend higher than 18" below the bottom of ceiling, structure, or sprinkler heads.

(2) When basements, storerooms, or attics are used for combustible storage, they shall meet the applicable requirements listed in §135.64 of this title (relating to Design Requirements).

(3) Local supplies of paints, oils, and highly volatile combustible liquids shall be kept in metal cabinets having tight closing doors and drip pans. These cabinets must be well-ventilated at top and bottom.

(4) The entire premises shall be kept free from accumulations of combustible materials not necessary for immediate operation of the building.

(d) Testing and maintenance

(1) The ambulatory surgical center structure, its component parts and facilities shall be kept in good repair and maintained with consideration for the safety of the occupants of the building. Mechanical, plumbing, and electrical equipment shall be maintained in good repair and operating condition at all times. Physical plant equipment, medical and surgical equipment shall be tested and maintained under a formal preventive maintenance and testing program and documentation kept for annual reviews and/or inspections.

(2) All air-conditioning and ventilating systems and all ductwork shall meet the requirements of NFPA 90A.

(3) All elevator equipment must be tested as required by §135.64(o) of this title (relating to Design Requirements).

(e) Gas appliances.

(1) The installation, use and maintenance of gas fired cooking appliances, heating equipment and gas piping including venting shall comply with the National Fire Protection Association's Pamphlet No. 54, National Fuel Gas Code. The use of portable gas heaters is prohibited.

(2) The use of unvented open flame heaters is specifically prohibited.

(3) Where gas-fired equipment is used, a fresh air inlet vent shall be provided directly to the outside of the building.

(4) All hot water heaters shall be equipped with an approved temperature pressure relief valve.

(5) All direct-fired heating units shall be designed to permit the discharge of the products of combustion into a flue or vent and all such units shall be properly vented to a vertical flue or chimney leading to the outer air above the high point on the roof. Direct-fired heating units shall not be permitted in any operating room, or in any other room where combustible vapors may be present.

(f) Heating, cooling and ventilating systems.

(1) Heating shall be provided for all areas of the ambulatory surgical center to meet prevailing weather conditions and shall have the capability of maintaining a minimum temperature of 72°F. All heating units and systems shall meet local and state regulations.

(2) All heating, cooling, and ventilating systems shall conform to the requirements of §135.65 of this title (relating to Mechanical Requirements).

(g) Wiring and electrical appliances.

(1) General.

(A) New installations, corrections of defects, and system maintenance shall follow the recommendations of the National Electrical Code, NFPA 70.

(B) Electric lamps and other appliances in closets or other confined locations shall be protected by wire guards if near woodwork, paper, clothing, or other combustible materials, or if subject to breakage.

(C) All fixtures, switches, sockets, and other pieces of apparatus shall be maintained in a safe and workable condition.

(D) All cord-connected equipment shall be plugged directly into a wall receptacle using the cord furnished with the equipment. The use of extension cords is prohibited.

(E) All electrical outlets shall be simplex or duplex outlets or UL-approved multiple outlet assemblies. The use of a plug-in multiple outlet assemblies is prohibited.

(F) Wire supports shall be non-combustible insulated knobs and cleats, or wire staples, or in metal or metallic raceways.

(G) Surface mounted wiring installed on walls or partitions should be protected from mechanical injury to a height of seven feet above the floor.

(H) All wires through walls, floors, partitions, and building members shall be installed in approved metal sleeves or in approved conduit.

(I) All electrical heating devices shall be equipped with a pilot light to indicate when the device is in service, unless equipped with a temperature limiting device integral with the heater.

(2) Nurses' call systems. Emergency call systems are required in all ambulatory surgical centers. See §135.66(i) of this title (relating to Electrical Requirements).

(3) Grounding. All equipment, fixtures and appliances shall be properly grounded in accordance with NFPA 70, national elec-

trical code.

(4) Emergency power.

(A) Ambulatory surgical centers shall have an approved stand-by essential electrical system, as referenced in NFPA 70, NFPA 76A and §135.66(g) of this title (relating to Electrical Requirements).

(B) The emergency generator shall be exercised weekly and tested under load conditions at least once every 30 days for a minimum of 30 minutes. Written logs will be maintained on site.

(h) Lighting. There shall be adequate illumination of the operative field as well as general illumination. All means of egress such as hallways, corridors, stairways, exterior exit doors, inclines, ramps, and entrances shall be well lighted in order to prevent accidents. Every room, including storerooms and attic shall have sufficient artificial lighting facilities so that all parts shall be clearly visible under such artificial lighting, as referenced in NFPA 101.

(i) Plumbing.

(1) New installations, correction of defects, and system maintenance shall all follow the recommendations of the National Standard Plumbing Code. The Uniform Plumbing Code may be used in lieu of National Standard Plumbing Code in municipalities or jurisdictions where it has been adopted.

(2) Bathroom and lavatory facilities shall be provided in number ample for use according to number of patients of both sexes and personnel. A minimum requirement is one toilet and lavatory for patient use and one toilet and lavatory for staff use.

(3) When a municipal water supply is not available, the water shall be tested at monthly intervals in accordance with the standards promulgated by state regulations.

(4) The plumbing system shall be free from cross-connections and interconnections between a safe water supply and one which is subject to contamination, or between a safe water supply and sewage, waste water, drainage, condensates, previously used water, contents of plumbing fixtures, or any other contaminated material.

(5) All plumbing fixtures and equipment shall be so designed and installed as to prevent the back-flow or back-siphonage of any material into the water supply. The over-the-rim type water inlet shall be used whenever possible. Vacuum-breaking devices shall be properly installed when an over-the-rim type water inlet cannot be utilized.

(6) The National Standard Plumbing Code shall be used to determine satisfactory compliance of individual plumbing fixture installations.

(7) The disposal of all radioactive wastes shall conform to the regulations of the Texas Department of Health, Bureau of Radiation Control, §§289.111-289.126 of this title (relating to Texas Regulations for Control of Radiation).

(j) Waste and waste disposal.

(1) Disposal of garbage and waste shall be approved by the state and the local authorities.

(2) All containers for garbage used in or outside the building shall be a suitable watertight container, have tight-fitting covers, and be rodent proof.

(3) Facilities shall be provided for sanitary storage and disposal of waste by incineration, mechanical destruction, compacting, containerization, removal, or by a combination of these techniques. Tissue and infectious waste shall be disposed of by incineration, except for dental and ophthalmic units.

(4) The design and construction of incinerators and trash chutes shall be in accordance with NFPA 82. The facility may contract out for incineration services with a facility operating an incinerator which meets these standards.

§135.52. Renovation Projects.

(a) Construction phasing. Projects involving alterations of and additions to existing buildings shall be programmed and phased so that on-site construction will minimize disruptions of existing functions. Access, exitways, and fire protection shall be maintained so that the safety of the occupants will not be jeopardized during construction.

(b) Minimum requirements. All requirements listed in the new constructions standards, relating to new construction projects, are applicable to renovation projects involving additions or alternations, except that when existing conditions make changes impractical to accomplish, minor deviations from functional requirements may be permitted if the intent of the requirements is met, and care and safety of patients will not be jeopardized.

(c) Nonconforming conditions. When doing renovation work, if it is found to be unfeasible to correct all of the nonconforming conditions in the existing facility in accordance with these standards, a conditional approval may be granted by the licensing agency if the operation of the facility, necessary access by the handicapped, and safety of the patients are not jeopardized by the remaining nonconforming conditions.

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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New Construction Requirements for Ambulatory Surgical Centers

★ 25 TAC §§135.61-135.67

The new sections are proposed under Texas Civil Statutes, Article 44371-2, §3, which authorize the Texas Board of Health to adopt rules covering ambulatory surgical centers.

§135.61. *Application of Standards.*

(a) General. Every ambulatory surgical center building hereafter constructed, every building hereafter converted for use as an ambulatory surgical center, every building herein after applying for state licensure as an ambulatory surgical center, and every addition and/or alteration hereafter made to an ambulatory surgical center building shall comply with the requirements of these standards. These standards comprise an addition to the requirements for existing construction.

(1) Compliance with these standards does not constitute release from the requirements of other applicable state and local codes and ordinances. These standards must be followed where they exceed other codes and ordinances.

(2) In accordance with state law, Handicapped Accessibility Act of Texas administered by the State Purchasing and General Services Commission, Austin, special design features for the handicapped shall be provided for all ambulatory surgical centers.

(3) No building may be converted for use as a licensed ambulatory surgical center which, because of its location, physical condition, state of repair, or arrangement of facilities, would be hazardous to the health and safety of the patient who would be treated in such a building. Any ambulatory surgical center facility which has been vacated over a period of one year or used for occupancy other than ambulatory surgical center, will be classified as a new facility. Prior to licensure by this agency, the facility must meet all requirements of these standards for new construction.

(b) Provisions in excess of code requirements. Nothing in these standards shall be construed to prohibit a better type of building construction, more exits, or otherwise safer conditions than the minimum requirements specified in these standards.

(1) Nothing in these standards is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety to those prescribed by these standards, providing technical documentation is submitted to the licensing agency to demonstrate equivalency and the system, method, or device is approved for the intended purpose.

(2) The specific requirements of these standards for existing buildings may be modified by the licensing agency to allow alternate arrangements that will secure as nearly equivalent safety to life from fire as prac-

tical, but in no case shall the modification afford less safety to life than compliance with the corresponding provisions contained in these standards for existing buildings.

§135.62. *Submittal Requirements.*

(a) Submission of plans and specifications. Before construction is begun, plans and specifications covering the construction of new buildings or major alterations to existing buildings, shall be submitted to the licensing agency for review and approval. This submission should be made in two stages—preliminary and final. All deficiencies noted in the preliminary (stage one) plan review shall be satisfactorily resolved prior to proceeding into final plans and specifications (stage two). This also includes all fast-track projects.

(1) The final working plans and specifications shall be submitted to the licensing agency for review and approval. Any contract modifications which affect or change the function, design, or designated use of an area shall be submitted to the licensing agency for approval prior.

(2) Minor alterations or remodeling changes which do not involve alterations to load bearing members or partitions; which do not change functional operation; which do not affect fire safety; and which do not add services over those for which the ambulatory surgical center is licensed need not be submitted for approval.

(3) No system of mechanical, electrical, plumbing, fire protection, or medical gases should be installed, nor any such existing system materially altered or extended until complete plans and specifications for the installation, alteration, or extension have been submitted to the licensing agency for review and approval.

(b) Preparation of plans and specifications.

(1) Stage one—preliminary plans and outline specifications (one complete set). This submittal should contain sufficient information to establish the following: scope of project; project location; required fire safety and existing criteria; building construction type; compartmentation showing fire and smoke barriers; services and the assignment of all spaces, areas and rooms, for each floor level including the basement.

(2) Stage two—final drawings and specifications (one complete set). All working drawings shall be well prepared so that clear and distinct prints may be obtained, accurately dimensioned, and shall include all necessary explanatory notes, schedules, and legends. Final drawings shall be complete and adequate for contract purposes. All final plans and specifications shall be appropriately sealed and signed by a registered architect and professional engineer licensed by the State of Texas. Drawings shall be prepared for each of the following branches of work:

- (A) architectural drawings;
- (B) equipment schedules;
- (C) structural drawings;

(D) mechanical drawings. These drawings with specifications shall show the complete heating, steam piping and ventilation systems; plumbing, drainage and stand-pipe systems. Drawings shall include identification of all spaces, volume of air provided these spaces, fire and smoke partitions, and location of all dampers, registers, and grilles; and

(E) electrical drawings.

(i) Drawings shall show all electrical wirings, outlets, and equipment which require electrical connections.

(ii) Emergency call system showing all stations, signals and annunciators on the plans and one line diagram of the complete system.

(iii) Fire alarm system showing all system components and fire zones on the plans and the one line diagram of the complete system.

(iv) A one line diagram showing the complete electrical distribution system including the main switchgear, transfer switches, emergency generator(s), panels, subpanels, transformers, conduit, and wire sizes

(3) Special submittals.

(A) Sprinkler systems. A minimum of four sets of sprinkler system shop drawings, specifications, and calculations, prepared by a licensed installer, shall be submitted to the licensing agency for review and approval prior to installation of the proposed system in the project.

(B) Radiation protection. Any project that includes radiology equipment used in treatment of patients shall submit one set of plans, specifications, and shielding criteria, prepared by a qualified expert in the field of radiation protection, to the licensing agency for review and approval prior to installation in the project.

(c) Construction and inspections. Notification shall be given the licensing agency when construction is commenced. If the construction takes place in or near occupied areas, adequate provision shall be made for the safety and comfort of patients.

(1) Construction shall be completed in compliance with the final drawings and specifications including all addenda or modifications approved for the project

(2) An appropriate construction progress inspection and final inspection of the facility will be scheduled for the purpose of verifying compliance with the licensing standards, plans, and specifications.

(3) No facility shall occupy any new structure or major addition or renovation space until the appropriate permission has been received from the local building and fire authorities.

§135.63. *Site Requirements.*

(a) Location.

(1) Accessibility. The site of any new ambulatory surgical center shall be easily accessible to the community and to service vehicles such as delivery trucks, ambulances, and fire protection apparatus

(2) Flood protection. Construction of new ambulatory surgical centers shall be avoided in designated flood plains. Where such is unavoidable, consult the local flood control agencies for the latest applicable regulations pertaining to flood protection measures.

(b) Hazardous conditions.

(1) New ambulatory surgical centers shall not be constructed over underground liquid butane, propane, or gas transmission lines, over any underground high pressure lines, under high voltage electrical lines or near hazardous or hazard producing plant.

(2) New ambulatory surgical centers shall not be built within 300 feet of above-ground or underground liquid petroleum transmission lines, or storage tanks containing flammable liquids used in connection with a bulk plant, marine terminal, aircraft refueling, or other bottling plant of a liquified petroleum gas installation.

(c) Roads and parking.

(1) Paved roads. Paved roads shall be provided within the lot lines to provide access to the main entrance, and to service entrances, including loading and unloading docks for delivery trucks. Paved walkways shall be provided in accordance with codes and ordinances.

(2) Parking. Vehicle parking, including handicapped, for ambulatory surgical center facilities shall be provided at the minimum ratio of two spaces for each operating room plus sufficient parking spaces to accommodate the maximum number of staff on duty at one time. On-street parking, if available, may be considered as meeting part of this requirement. Exceptions may be made with approval of the state for facilities located in areas with a high population density if adequate public or private parking is available or if the facility is accessible to a public transportation system. Parking spaces for handicapped persons shall be located as near as possible to the principal entrance and planned so that travel behind parked cars is not necessary. All parking spaces for handicapped persons shall comply with standards and specifications published by the State Purchasing and General Services Commission.

§135.64. Design Requirements.

(a) Administration and public areas.

(1) Entrance. Entrances shall be located at grade level, sheltered from the weather, and able to accommodate wheelchairs. If the ambulatory surgical center is located on a floor above grade within a multilevel office building, the building shall have an entry lobby at grade that meets this requirement. Elevators shall be accessible and shall meet the requirements of subsection (o) of this section. All required stairs and exits shall conform to requirements on NFPA 101, and subsection (p) of this section.

(2) Reception area.

(A) A reception area is required of all ambulatory surgical centers and shall include:

- (i) waiting space(s);
- (ii) public toilet facilities;
- (iii) public telephone(s); and
- (iv) drinking fountain(s).

(B) The items mentioned in subparagraph (A)(ii)-(iv) of this paragraph may be shared with other tenants in a multitenant building.

(3) Interview space(s). Space shall be provided for private interviews relating to social services, credit and admission.

(4) General or individual office(s). Offices shall be provided for business transactions, records, and administrative and professional staff.

(5) Medical records. Medical records shall be located within a secure designated area of the ambulatory surgical center or in a conforming adjoining accessible space.

(6) General storage facilities. A minimum of 50 square feet per operating room is required for general storage space(s). Exclusive of soiled holding, sterile supplies, clean storage, drug storage, locker rooms, and operating room equipment storage

(7) Functional spaces. Functional spaces required in paragraphs (3)-(5) of this subsection may be in separate rooms or grouped together in one or more areas as program dictates.

(b) Preoperative waiting—examination—changing.

(1) Preop waiting shall be separate from recovery. This may include patient changing area and preop exam functions. A designated area shall be provided where ambulatory surgical center patients may change from street clothing into hospital gowns and be prepared for surgery. This shall include, when applicable, lockers, toilets, clothing change or gowning area(s), and space for the administration of medications.

(2) A minimum of one patient station per operating room is required. Room size shall be determined by functions to be performed and types of equipment to be used.

(3) Arrangements shall permit at least three feet clearance at each side and at the foot of the patient gurney station or reasonable circulation space if gurney not used. A lavatory or sink equipped for handwashing and a counter or shelf space for writing shall be provided. Patient toilet facilities are required. Patient toilet and changing areas may be shared with recovery room, if conveniently located.

(c) Treatment room(s) for minor procedures (for local anesthetics only). Treatment rooms shall have a minimum floor area of 80 square feet, excluding such spaces as vestibule, toilet, closet, and work counter (whether fixed or movable). The room shall be adequate in size to accommodate equipment required to perform designated function. A lavatory or sink equipped for hand-

washing and a counter or shelf space for writing shall be provided.

(d) Operating room(s).

(1) A minimum of one operating room is required in each facility. Each operating room shall have a minimum clear area of 240 square feet exclusive of fixed or movable cabinets and shelves. Additional clear area may be required to accommodate special functions in one or more of these rooms. Provide an emergency communication system connecting with the surgical suite control station. Provide at least one x-ray film illuminator in each room. Storage space for splints and traction equipment shall be provided for rooms to be used for orthopedic surgery.

(2) Rooms designated primarily for surgical cystoscopic procedures shall be as noted for general operating rooms except that each room may have a flushing rim type floor drain.

(e) Recovery room(s).

(1) A minimum of two patient stations per operating room(s) for post-anesthesia/recovery for surgical patients shall be provided. Provide at least three feet each side or between beds and space at foot of bed as needed for work and/or circulation. Patient access to toilet and changing areas required may be shared with preop area.

(2) A separate supervised room shall be provided for use by patients who are able to leave the recovery/post-anesthesia room but need additional time for all vital signs to be stabilized to the point where the patient may leave the facility. It may contain a lounge area for family members with toilet facilities. The reception area may be utilized for this function.

(f) Surgical service areas. The following services shall be provided.

(1) Control station. A control station shall be located to permit visual surveillance of all traffic which enters the operating suite.

(2) Sterilizer equipment. Sterilizer equipment shall be located in a room (or rooms) with access limited to properly gowned personnel and located convenient to serve operating suite. Equipment shall be arranged to minimize contamination of sterile products during removal from sterilizer. ETO (ethylene oxide) sterilizers shall meet OSHA standards for safety.

(3) Pharmacy. Adequate space shall be provided in a designated area or room for the pharmacy (may be part of recovery room nurse station area).

(A) The pharmacy shall include space for secure storage, labeling, dispensing, and the sterile preparation of drugs. The pharmacy also shall include a work counter and space for storage of pharmacy records and policies.

(B) Special provisions shall be made for securing Schedule II controlled substances with a double locking capability.

(C) The pharmacy shall be pro-

vided with or conveniently located to a sink or lavatory.

(D) Provisions should be made for refrigeration of certain pharmaceuticals in a separate, secure refrigerator located within the pharmacy area.

(4) Drug distribution station. Provision shall be made for storage and preparation of medication to be administered to patients.

(5) Scrub facilities. A scrub sink shall be provided near the entrance to each operating room. Scrub facilities shall be arranged to minimize any incidental splatter on nearby personnel or supply carts. One scrub station with dual controls may serve two adjacent operating rooms.

(6) Soiled workroom. A soiled workroom shall be provided for the exclusive use of the surgical suite staff (or a soiled holding room that is part of a system for the collection and disposal of soiled material). The soiled workroom shall contain a clinical sink or equivalent flushing type fixture, work counter, sink equipped for handwashing, waste receptacle, and linen receptacle. A soiled holding room shall be similar to the soiled workroom except that the clinical sink and work counter may be omitted.

(7) Fluid waste disposal facilities. These shall be conveniently located with respect to the general operating rooms. A clinical sink or equivalent equipment in a soiled workroom or in a soiled holding room would meet this requirement.

(8) Clean workroom or a clean supply room. A clean workroom is required when clean material is assembled within the surgical suite prior to use. A clean workroom shall contain work counter, and space for clean and sterile supplies. A clean workroom or a clean supply room may be included with the sterilizer equipment (see paragraph (2) of this subsection).

(9) Medical gas storage facilities.

(A) Medical gas storage facilities shall be in accordance with the requirements of NFPA 56F.

(B) An anesthesia workroom, if provided for cleaning, testing, and storing anesthesia equipment, shall contain a work counter and sink.

(10) Equipment storage room(s) or areas. Storage room(s) or areas for equipment and supplies used in the surgical suite shall be provided.

(11) Staff clothing change areas.

(A) Appropriate areas shall be provided for male and female personnel (orderlies, technicians, nurses, and doctors) working within the surgical suite. The areas shall contain clothing storage, toilets, lavatories, and space for donning scrub suits and boots. These areas shall be arranged to provide a one-way traffic pattern so that personnel entering from outside the surgical suite can change, gown, and move directly into the surgical suite.

(B) Lounge and toilet facilities

for surgical staff shall be provided in centers having three or more operating rooms and shall be located to permit use without leaving the surgical suite. These facilities may be integrated with staff changing areas.

(12) Janitor's closet. A closet containing a floor receptor or service sink and storage space for housekeeping supplies and equipment shall be provided exclusively for the surgical suite.

(13) Laundry/linen service.

(A) Each facility shall have provisions for storage and processing of clean and soiled linen for appropriate patient care. Processing may be done within the facility or by contract.

(B) If linen is processed onsite, within this facility, the following shall be provided:

(i) a receiving, holding, and sorting room for distribution of soiled linen. This may be shared with the soiled utility room or soiled holding room;

(ii) a laundry processing room with washer and dryer equipment (may be located within the soiled holding and sorting room or in a separate room). The washer shall not be located within the sterile processing room,

(iii) storage for laundry supplies;

(iv) handwashing facilities located within each separate room where soiled linen is processed and handled;

(v) that the arrangement of equipment shall permit an orderly flow with a minimum of cross traffic that could mix and clean soiled operations.

(14) Storage space for wheelchairs.

(15) Area for emergency crash cart. An area located out of traffic and convenient to operating and recovery rooms shall be provided for an emergency crash cart.

(g) Radiology.

(1) Radiology may be provided by contract.

(2) If equipment is to be provided for basic diagnostic purposes, the suite shall contain:

(A) film processing facilities, and

(B) viewing and administration area(s).

(h) Laboratory

(1) Facilities shall be provided either directly within the ambulatory surgical center or through an effective contract arrangement with a nearby hospital or accredited laboratory service.

(2) If the facilities are provided on site, then at least the following minimum laboratory facilities shall be provided in the outpatient facility. They may be contained in the prep area or in a separate room:

(A) laboratory work counter(s), with sink and electric services;

(B) storage cabinet(s) or closet(s); and

(C) specimen collection facilities. For dip stick urinalysis, urine collection rooms shall be equipped with a water closet

and lavatory. Blood collection hemocrit facilities shall have space for a chair and work counter and hand wash facilities.

(i) Janitors' closet(s). In addition to the janitors' closet called for in the surgery suite, sufficient janitors' closets shall be provided throughout the facility as required to maintain a clean and sanitary environment. Each shall contain a floor receptor or service sink and storage space for housekeeping equipment and supplies.

(j) Engineering service and equipment areas. Equipment rooms with adequate space shall be provided for mechanical equipment, and electrical equipment.

(k) Waste processing services.

(1) Storage and disposal. Space and facilities shall be provided for the safe and sanitary storage and disposal of waste by incineration, mechanical destruction, compaction, containerization, removal, or by a combination of these techniques as appropriate for the material handling.

(2) Incinerator.

(A) A gas, electric, or oil-fired incinerator shall be provided for the complete destruction of infectious waste. Infectious waste shall include, but shall not be limited to, dressings and material from open wounds and laboratory specimens. Incinerator service may be by contract.

(B) Design and construction of incinerators and trash chutes shall be in accordance with NFPA Standard 82, and shall be designed and equipped to conform to requirements prescribed by air pollution regulations in the area.

(l) Details and finishes. All details and finishes shall meet the following requirements.

(1) Details.

(A) Minimum public corridor width shall be four feet, in clear width except for a corridor where patients are transported in stretchers or beds which shall be eight feet in clear width. Where patients are transported by stretcher, access to at least one exit shall be by an eight-foot wide corridor.

(B) A building used exclusively for the ambulatory surgery center shall comply with NFPA 101, §12.6, and as described herein. Where included in buildings with other occupants, there shall be not less than one-hour separation between the ambulatory surgical center and any other sections. The ambulatory surgical center shall have not less than two exits to the exterior. Exits, finishes, separation of hazardous areas, and smoke separation shall be as required in the NFPA 101, Chapter 12.6.

(C) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located not to restrict corridor traffic or reduce the corridor width below the required minimum.

(D) Toilet rooms in recovery areas which may be used by patients shall be equipped with doors and hardware which will permit access from the outside in any

emergency. When such rooms have only one opening or are small, the doors shall be capable of opening outwards, or be otherwise designed to be opened without need to push against a patient who may have collapsed within the room.

(E) The minimum width of doors for patient access to examination and treatment rooms shall be three feet. The minimum width of doors to rooms needing access for beds (operating room, recovery, preop) shall be three feet eight inches.

(F) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. Large walk-in type closets are considered as occupiable spaces.

(H) Doors, sidelights, borrowed lights, and windows in which the glazing extends down to within 18 inches of the floor (thereby creating possibility of accidental breakage by pedestrian traffic) shall be glazed with safety glass, wire glass, or plastic glazing material that will resist breaking and will not create dangerous cutting edges when broken. Safety glass or plastic glazing materials shall be used for shower doors and bath enclosures.

(I) Provisions for hand drying shall be included at all handwash facilities except scrub sinks. These shall be single use separate individual paper or cloth units enclosed to provide protection against dust and soil and insure single unit dispensing. Hot air dryers are permitted.

(J) Where labeled fire doors are required, these shall be certified by an independent testing laboratory as meeting the construction requirements equal to those for fire doors in NFPA Standard 80. Reference to a labeled fire door shall be constructed to include labeled frame and hardware.

(K) Dumbwaiters, conveyors, and material handling systems shall comply with ANSI A17.1, Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks

(L) Radiation protection requirements of x-ray and gamma ray installations shall conform with NCRP Reports Nos. 33 and 49. Provisions shall be made for testing the completed installation before use and all defects must be corrected before acceptance.

(M) The minimum ceiling height shall be eight feet with the following exception.

(i) Operating rooms or other rooms containing ceiling-mounted equipment and including those with ceiling-mounted surgical light fixtures shall have height required to accommodate the equipment and/or fixture, but no less than nine feet.

(ii) Rooms containing heat pro-

ducing equipment shall be ventilated.

(2) Finishes.

(A) Cubicle curtains and draperies shall be noncombustible or rendered flame retardant and shall pass both the large and small scale tests of NFPA Standard 701.

(B) Flame spread and smoke developed ratings of finishes are covered under NFPA 101. Whenever possible, the use of materials known to produce large amounts of noxious gases shall be avoided.

(C) Conductive flooring may be omitted from treatment and operating rooms provided that a written resolution is signed by the ASC board stating that no flammable anesthetic agents will be permitted in these areas and provided that appropriate notices are permanently and conspicuously affixed to the wall in each such area and room.

(D) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that are subject to traffic while wet, such as shower and bath areas and certain work areas, shall have a nonslip surface.

(E) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(F) Ceilings shall be cleanable and those in surgical rooms and sterile processing shall be readily washable, smooth and impervious. These sensitive areas shall have a finished ceiling covering all overhead ductwork and piping. Finished ceilings may be omitted in mechanical and equipment spaces, general storage areas, and similar spaces, unless required for fire-resistive purposes.

(G) Acoustical ceilings may be provided in corridors, multipurpose rooms, waiting areas, preop, and recovery areas.

(m) Construction, including fire resistive requirements.

(1) Construction. Construction of a freestanding ambulatory surgical center shall generally be similar to recognized national model building code requirements applicable to office occupancies and to the minimum requirements of NFPA 101, Chapter 12-6, according to the table on general pressure relationships and ventilation of ambulatory surgery areas, §135.67(b) of this title (relating to Tables).

(2) Interior finishes. Interior finish materials shall comply with the flame spread limitations and the smoke production limitations shown in NFPA 101. Wall finishes less than four mil in thickness applied over noncombustible base need not comply with the aforementioned.

(3) Insulation materials. Building insulation materials, unless sealed on all sides and edges, shall have a flame spread rating of 25 or less and a smoke developed rating

of 150 or less when tested in accordance with ASTM Standard E 84.

(n) Provision for natural disasters. Special provisions shall be made in the design of buildings in regions where local experience shows loss of life or extensive damage to buildings resulting from hurricanes, tornadoes, or floods.

(o) Elevators. All buildings that have patients' services located on other than the main entrance floor shall have electric or electrohydraulic elevators. The elevators shall be installed in sufficient quantity, capacity, and speed that the average interval of dispatch time will not exceed one minute, and average peak loading can be accommodated. A hospital-type elevator shall be provided if the operating room(s) are located on a floor other than the preop and/or recovery floors. Installation and testing of elevators shall be in accordance with ANSI A-17.1-1971.

(1) Cars and platforms. Cars shall have a minimum inside floor dimension of not less than five feet. The car door shall have a clear opening of not less than three feet. Cars of hospital-type elevators shall have inside dimensions that will accommodate a patient's bed and attendants and shall be at least five feet wide by seven feet six inches deep. The car door shall have a clear opening of not less than three feet eight inches.

(2) Operation. Elevators, except freight elevators, shall be equipped with a two-way special service switch to permit cars to bypass all landing button calls and be dispatched directly to any floor.

(3) Elevator controls, alarm buttons, and telephones. Elevator controls, alarm buttons, and telephones shall be:

(A) accessible to wheelchair occupants; and

(B) of a type that will not be activated by heat or smoke.

(p) Field inspection and tests. Inspections and tests shall be made and the owner shall be furnished written certification that the installation meets the requirements set forth in this section and all applicable safety regulations and codes.

§135.65. Mechanical Requirements.

(a) General.

(1) Design and construction. All mechanical systems shall be designed for overall efficiency and life cycle costing, including operational costs. However, in no case shall patient care or safety be sacrificed for conservation.

(2) Performance and acceptance. Prior to completion and acceptance of the facility, all mechanical systems shall be tested, balanced, and operated to demonstrate that the installation and performance of these systems conform to the requirements of the plans and specifications. Refer to §135.62(b)(2) of this title (relating to Submittal Requirements).

(3) Material lists and instructions. Upon completion of the contract, the owner shall be furnished with a complete set of

manufacturers' operating, maintenance, and preventive maintenance instructions, and parts list with numbers and description for each piece of equipment. The owner shall also be provided with instruction in the operational use of systems and equipment as required.

(b) Thermal and acoustical insulation.

(1) Insulation shall be provided for the following within the ASC:

(A) boilers, smoke breeching, and stacks;

(B) steam supply and condensate return piping;

(C) hot water piping above 120°F and all hot water heaters, generators, and converters;

(D) chilled water, refrigerant, other process piping and equipment operating with fluid temperatures below ambient dew point;

(E) water supply and drainage piping on which condensation may occur;

(F) air ducts and casings with outside surface temperature below ambient dew point;

(G) other piping, ducts, and equipment as necessary to maintain the efficiency of the systems.

(2) The insulation required in paragraph (1) of this subsection may be omitted from hot water and steam condensate piping not subject to contact by patients when the heat loss from such piping without insulation does not increase the energy requirements of the system.

(3) Insulation, including finishes and adhesives on the exterior surfaces of ducts, pipes, and equipment, shall have a flame spread rating of 50 or less and a smoke developed rating of 150 or less as determined by an independent testing laboratory in accordance with NFPA 255 as required by NFPA 90-A.

(4) Linings in air ducts and equipment shall meet the Erosion Test Method described in Underwriters' Laboratories, Inc., Publication No. 18. These linings, including coatings and adhesives, and insulation on exterior surfaces of pipes and ducts in building spaces used as air supply plenums, shall have a flame spread rating of 25 or less and a smoke developed rating of 50 or less as determined by an independent testing laboratory in accordance with NFPA 255 as required by NFPA 90-A.

(5) Duct linings shall not be used in systems supplying operating and recovery rooms unless terminal filters of at least 90 percent efficiency are installed downstream of linings.

(c) Steam and hot water systems.

(1) Boilers. Boilers shall have the capacity, based upon the net ratings published by the Hydronics Institute, to supply the normal requirements of all systems and equipment.

(2) Valves. Supply and return mains and risers of space heating and process steam systems shall be valved to isolate the various

sections of each system. Each piece of equipment shall be valved at the supply and return ends except for vacuum condensate drains

(d) Air conditioning, heating, and ventilating systems.

(1) Temperatures and humidities.

(A) The designed capacity of the systems shall provide the following temperatures and humidities in the areas noted.

(i) For operating rooms, the temperature shall be maintained between 70°F-75°F and the relative humidity between 45%-60%.

(ii) For recovery rooms, the temperature shall be maintained at 75°F and the relative humidity between 30%-60%.

(B) Each operating room and the recovery room shall have temperature/humidity gauges, with visual monitoring capabilities, conveniently mounted.

(C) For other areas occupied by patients the indoor winter design temperature shall be 75°F. For all other occupied areas, the indoor winter design temperatures shall be 72°F.

(2) Ventilation system details.

(A) All air-supply and air-exhaust systems shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in the table in §135.67(b) of this title (relating to Tables) shall be considered as minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.

(B) Outdoor intakes shall be located as far as practical but not less than 25 feet from exhaust outlets of ventilating systems, combustion equipment stacks, medical-surgical vacuum systems, plumbing vents stacks, or from areas which may collect vehicular exhaust and other noxious fumes (plumbing and vacuum vents) that terminate above the level of the top of the air intake may be located as close as 10 feet. The bottom of outdoor air intakes serving central systems shall be located as high as practical but not less than six feet above ground level, or if installed above the roof, three feet above the roof level.

(C) The ventilation systems shall be designed and balanced to provide the pressure relationship as shown in Table in §135.67(b) of this title (relating to Tables).

(D) All air supplied to operating rooms shall be delivered at or near the ceiling of the area served; all return air from the area shall be removed near floor level (three inches-seven inches). At least two return air outlets shall be used in each operating room.

(E) Each space used for the administering of inhalation anesthetizing agents shall be provided with a separate scavenging system for venting of waste anesthetizing gases.

(i) Potential harmful effects upon personnel subject to constant exposure to anesthetizing gases are generally recognized, however the environment within the oper-

ating theater shall meet OSHA standards for trace contaminants of anesthesia gases. Any scavaging system should be designed to remove as much of the anesthetizing gas as possible. Maximum effectiveness of the scavaging system may also require careful attention to selection and maintenance of anesthetizing equipment used.

(ii) Pressure balance must be such that the gas collecting system does not interfere with required room pressure relationship or with breathing circuit that may affect patient safety. The intake shall be appropriately located in relation to the patient and the equipment and design so that gases are exhausted directly to the outside.

(iii) Exception: If medical/surgical vacuum system is installed in accordance with NFPA 99 or 56K, this system may be utilized as scavenging system in lieu of a mechanical system.

(F) All central ventilation or air conditioning systems shall be equipped with filters having efficiencies no less than those specified in the table in §135.67(c) of this title (relating to Tables). Where two filter beds are required, Filter Bed 1 shall be located upstream of the air conditioning equipment and Filter Bed 2 shall be downstream of the supply fan, cooling coils, any recirculating spray water systems, and water reservoir type humidifiers.

(i) All filter efficiencies shall be average atmospheric dust spot efficiencies tested in accordance with ASHRAE Standard 52-76.

(ii) Filter frames shall be durable and carefully dimensioned and shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage.

(iii) A manometer shall be installed across each filter bed serving sensitive areas or central air systems. Remote monitors shall be located within occupied spaces.

(G) Air handling duct systems shall meet the requirements of NFPA Standard 90A.

(H) Ducts which penetrate construction intended for x-ray or other ray protection shall not impair the effectiveness of the protection.

(I) Fire and smoke dampers shall be constructed, located, and installed in accordance with the requirements of NFPA Standard 90A, except that all systems, regardless of size, which serve more than one smoke or fire zone, shall be equipped with smoke detectors to shut down fans automatically. Access for maintenance shall be provided at all dampers.

(i) Supply and exhaust ducts which pass through a smoke separation of required compartmentation and through which smoke can be transferred to another area shall be provided with dampers at the separation controlled to close automatically to prevent flow of air or smoke when the

fan, which moves the air through the duct, stops. Dampers shall be equipped with remote control reset devices except that manual reopening will be permitted if dampers are conveniently located.

(ii) Return air ducts which pass through a smoke separation of required compartmentation shall be provided with a damper at the separation actuated by smoke or products of combustion (other than heat) detectors. These dampers shall be operated by detectors located in the return air ducts from the smoke zone to sense smoke. On high velocity systems, a time delay is required so that fan will be stopped prior to damper closing. Engineered smoke exhaust systems may be considered for approval.

(J) The ventilation systems for medical gas storage rooms shall conform to the requirements of NFPA Standard 56A, including the gravity option. A mechanically operated air system is optional in this room only.

(K) Boiler rooms shall be provided with sufficient outdoor air to maintain combustion rates of equipment.

(e) Plumbing and other piping systems. All plumbing systems shall be designed and installed in accordance with the requirements of PHCC National Standard Plumbing Code, Chapter 14, Medical Care Facility Plumbing Equipment. The use of PVC piping is not permitted above slab, except as roof drains, vent piping (when enclosed in one hour rated noncombustible construction throughout the buildings spaces)

(1) Plumbing fixtures.

(A) The material used for plumbing fixtures shall be of nonabsorptive acid-resistant material.

(B) All fixtures used by medical and nursing staff in patient areas shall be trimmed with valves which can be operated without the use of hands (single lever devices are acceptable subject to above). Where blade handles are used for this purpose, they shall not exceed 4½ inches in length, except that handles on clinical sinks shall be not less than six inches long.

(C) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(2) Water system.

(A) Each water service main, branch main, riser, and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.

(B) Backflow preventers (vacuum breakers) shall be installed on hose bibbs, laboratory sinks, janitors' sinks, and on all other fixtures to which hoses or tubing can be attached.

(C) Water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water to hotwashing facilities shall not exceed 120°F. Hot water for laundry service shall be a minimum of 160°F.

(3) Drainage systems. Building sewers

shall discharge into a community sewage system. Where such a system is not available, a facility providing sewage treatment must conform to applicable local and state regulations.

(4) Fire extinguishing systems. Automatic fire extinguishing systems shall be installed in soiled linen, trash rooms, certain bulk storage rooms, attic spaces and crawl spaces used for storage, and any other hazardous area. An exception to this requirement is that these rooms may be provided with a complete two-hour rated enclosure construction in lieu of sprinkler protection.

(5) Nonflammable medical gas systems. If provided, nonflammable medical gas system installations shall be in accordance with the requirements of NFPA 99 and 56F. Where any piping or supply of medical gases is affected by change, alterations or additions, the entire system shall be tested and certified as to type, quality, and quantity of medical gas at each outlet and exact areas affected by each control valve station.

(6) Clinical vacuum (suction) systems. If required, clinical vacuum system shall be designed, installed, and maintained in accordance with NFPA 99 and NFPA 56K.

§135.66. *Electrical Requirements.*

(a) General.

(1) All material including equipment, conductors, controls and signaling devices shall be installed in compliance with the National Electrical Code, NFPA 70, as necessary to provide a complete electrical system. All materials shall be listed as complying with available standards of Underwriters' Laboratories, Inc., or other similarly established standards.

(2) All electrical installations and systems shall be tested to show that the equipment is installed and operates as planned or specified. A written record of performance tests on special electrical systems and equipment shall be supplied to the owner. Such tests shall show compliance with the governing codes and shall include isolated power systems, if utilized, grounding continuity and alarm systems.

(b) Switchgear and power panels.

(1) Switchboards. Circuit breakers or fusible switches that provide disconnecting means and overcurrent protection for conductors connected to switchboards and panelboards shall be enclosed or guarded to provide a dead-front type of assembly. The main switchboards (pertains to electrical service located within the physical confines of the ASC) shall be located in a separate room accessible only to authorized persons. The switchboards shall be convenient for use, readily accessible for maintenance, clear of traffic lanes, and in a dry ventilated space free of corrosive fumes or gases. Overload protective devices shall be suitable for operating properly in the ambient temperature conditions.

(2) Panelboards. Panelboards serv-

ing lighting and appliance circuits shall be located on the same floor as the circuits they serve. This requirement does not apply to emergency system circuits.

(c) Conduit. All connectors for controls, equipment, lighting, and power operating at 100 volts or greater shall be installed in metal or metallic raceways. Exception to this requirement is that wiring for isolated power systems, if utilized, in anesthetizing locations may be run in non-metallic conduit as per NFPA 70.

(d) Lighting.

(1) All spaces occupied by people, machinery, equipment within buildings, approaches to the buildings, and parking lots shall have lighting.

(2) A portable or fixed examination light shall be provided in each examination and treatment room.

(3) Operating rooms shall have general lighting in addition to local lighting provided by special lighting units at the surgical tables. Each fixed special lighting unit at the tables, except for portable units, shall be connected to an independent circuit.

(e) Receptacles (convenience outlets).

(1) Anesthetizing locations. Each operating room shall have at least four duplex receptacles.

(2) Rooms. Duplex grounding type receptacles shall be installed in all areas in sufficient quantities for the tasks to be performed. A minimum of one duplex receptacle for each wall shall be installed in each work area or room other than storage or lockers. Each examination and work table shall have access to a minimum of two duplex receptacles.

(3) Corridors. Duplex receptacles for cleaning equipment and general use shall be installed approximately 50 feet apart in all corridors and within 25 feet of ends of corridors.

(f) Equipment installation in special areas.

(1) X-ray installations, if applicable. Fixed and mobile x-ray equipment installations shall conform to NFPA Standard 70, Article 517.

(2) Installation in anesthetizing locations. All electrical equipment and devices, receptacles, and wiring shall comply with NFPA Standard 70, except that a static type line isolation monitor will be permitted.

(g) Emergency electric service.

(1) General. To provide electricity during an interruption of the normal electric supply, an emergency source of electricity shall be provided and connected to certain circuits for lighting and power.

(2) Sources. The source of this emergency electric service shall be as follows:

(A) an emergency generating set when the normal service is supplied by one or more central station transmission lines;

(B) an emergency generating set or a central station transmission line when the normal electric supply is generated on the

premises;

(C) where battery operated equipment is provided, a generator is not required. Battery systems shall be capable of meeting all functional requirements described herein and must be capable of four hours continuous operation.

(3) Emergency generating set. The required emergency generating set, including the prime mover and generator, shall be located on the premises and shall be reserved exclusively for supplying the emergency electrical system. An exception to this requirement is that a system of prime movers which are ordinarily used to operate other equipment and alternately used to operate the emergency generator(s) will be permitted provided that the number and arrangement of the prime movers are such that when one of them is out of service (due to breakdown or for routine maintenance) the prime mover(s) can operate the required emergency generator(s), and provided that the connection time requirements described in §135.66(g)(5) of this title (relating to Electrical Requirements) are met.

(4) Emergency electrical connections. Emergency electric service shall be provided to the distribution systems as follows:

(A) circuits for the safety of patients and personnel;

(i) illumination of means of egress as required in NFPA Standard 101;

(ii) illumination for exit signs and exit directional signs as required in NFPA Standard 101;

(iii) alarm systems including fire alarms activated at manual stations, water flow alarm devices of sprinkler system if electrically operated, fire and smoke detecting systems, and alarms required for non-flammable medical gas systems if installed;

(iv) paging or speaker systems if intended for communication during emergency. Radio transceivers where installed for emergency use shall be capable of operating

for at least one hour upon total failure of both normal and emergency power;

(v) general illumination and selected receptacles in the vicinity of the generator set;

(B) circuits essential to care, treatment, and protection of patients;

(i) task illumination and selected receptacles in medicine dispensing areas, angiographic laboratories, operating, recovery, and treatment rooms, and nurses' stations;

(ii) nurses' calling system;

(iii) blood bank refrigeration, if applicable;

(iv) equipment necessary for maintaining telephone service;

(C) circuits which serve necessary equipment. The connection to the following emergency electric services shall be delayed automatic except for heating, ventilation, fire pump, and elevators which may be either delayed automatic or manual:

(i) elevator service that will reach every floor used by patients. Throw-over facilities shall be provided to allow temporary operation of any elevator for the release of persons who may be trapped between floors;

(ii) continuous ventilation of anesthetizing locations via air handling equipment;

(iii) central suction systems serving medical and surgical functions, if installed;

(iv) equipment which must be kept in operation to prevent damage to the building or its contents.

(5) Details. The emergency electrical system shall be so controlled that after interruption of the normal electric power supply the generator is brought to full voltage and frequency. It must be connected within 10 seconds through one or more primary automatic transfer switches to emergency lighting systems, alarm systems, blood

banks, nurses' calling systems, equipment necessary for maintaining telephone service, and task illumination and receptacles in operating and recovery rooms, and other critical patients' service areas. All other lighting and equipment required to be connected to the emergency system shall either be connected through the above described primary automatic transfer switches or through other automatic or manual transfer switches. Receptacles connected to the emergency system shall be distinctively marked.

(6) Fuel storage. Capacity of on site fuel storage shall allow for four hours continuous load and six months testing.

(h) Fire alarm system.

(1) A manually operated electrically supervised fire alarm system shall be installed in each facility as described in NFPA 101 and NFPA 72A

(2) The fire alarm system shall have both audio and visual signaling devices.

(i) Emergency call systems.

(1) An emergency call station which may be used by medical staff to summon assistance shall be located in each operating room, treatment room, recovery, and preop holding. This emergency system should have voice communication capabilities so that type of assistance may be specified. A properly designed telephone/intercom system may serve as the emergency call system.

(2) A nurse call emergency button shall be located for patient's use in each patient toilet (preop and recovery). Each call button shall be provided with a pull cord to allow for use by a collapsed patient on the floor. Pull cord shall activate a visible signal outside of room where emergency call originated.

(3) Emergency calls shall register at a staffed location equipped for such emergencies.

§135.67. Tables.

(a) This subsection adopts the following table on ambulatory health care centers:

AMBULATORY HEALTH CARE CENTERS

CONSTRUCTION TYPE	STORIES	
	1	2 OR MORE
I (443) or I (332)	X	X
II (222) or II (111)	X	X
II (000)	X	AS
III (211)	X	X
III (200)	X	AS
IV (2HH)	AS	AS

V (111)	X	AS
V (000)	AS	AS

AS: Permitted if building is protected throughout with automatic sprinklers.

X: Permitted type of construction

NP: Not permitted

(b) This subsection adopts the following table on general pressure relationships and ventilation of ambulatory surgery areas:

GENERAL PRESSURE RELATIONSHIPS AND VENTILATION OF AMBULATORY SURGERY AREAS

AREA DESIGNATION	Pressure Relationship to Adjacent Areas	Minimum Air ⁵ Changes of Outdoor Air per Hour Supplied to Room	Minimum Total Air Changes per Hour Supplied to Room	All Air ⁴ Exhausted Directly to Outdoors	Recirculated Within Room Units
Operating Room	P	3	15	-	NO ²
Examination, Treatment Room and Pre-op	V	-	6	-	-
Recovery Room (Post-anesthesia)	P	1	6	-	NO ²
Medication Room	P	-	4	-	-
Pharmacy	P	-	4	-	-
X-ray Room	E	-	6	-	-
Soiled Workroom or Soiled Holding	N	-	10	YES	NO
Clean Workroom or Clean Holding	P	-	4	-	-
Darkroom	N	-	10	YES	NO
Toilet Room	N	-	10	YES	NO
Bathroom	N	-	10	YES	NO
Janitors' Closet	N	-	10	YES	NO
Sterilizer Equipment Room	N	-	10	YES	NO
Linen and Trash Chute Rooms	N	-	10	YES	NO
Laboratory, General ¹	N	-	6	-	-
Soiled Linen Sorting and Storage	N	-	10	-	NO
Clean Linen Storage	V	-	2	-	-
Anesthesia Storage ³	V	-	8	YES	NO
Central Services					
Soiled or Decontamination Room	N	-	6	YES	NO
Clean Workroom	P	-	4	-	-
Equipment Storage	V	-	2	-	-

P = Positive N = Negative E = Equal V = May Vary

¹ See Sections 135.65(d)(2)(J) & (K) (Mechanical Requirements) for additional requirements.
² Recirculating room units meeting the filtering requirement for sensitive areas in Section 135.65(d)(2)(F) (Mechanical Requirements).
³ For maximum energy conservation, use of a recirculated filtered air system is preferred. An all outdoor air system may be used, where required by local codes, provided appropriate heat recovery procedures are utilized for exhaust air.

- 4 Heat recovery systems should be utilized where appropriate especially for those areas where all air is required to be exhausted to the outside.
- 5 Requirements for outdoor air changes may be deleted or reduced and total air changes per hour supplied may be reduced to 25% of the figures listed when the affected room is unoccupied and unused provided that indicated pressure relationship is maintained. In addition, positive provisions such as an interconnect with room lights must be included to insure that the listed ventilation rates including outdoor air are automatically resumed upon reoccupancy of the space. This exception does not apply to certain areas such as toilets and storage which would be considered as "in use" even though "unoccupied."

General Note: The outdoor air quantities for central systems employing recirculating and serving more than a single area designation may be determined by summing the individual area air quality requirements rather than by providing the maximum listed ratio of outdoor air to total air. This does not apply to sensitive areas such as operating and recovery rooms.

(c) This subsection adopts the following table on filter efficiencies for central ventilation and air conditioning systems in ambulatory surgical centers.

FILTER EFFICIENCIES FOR CENTRAL VENTILATION AND AIR CONDITIONING SYSTEMS IN AMBULATORY SURGICAL CENTERS

AREA DESIGNATION	MINIMUM NUMBER OF FILTER BEDS	FILTER EFFICIENCIES (Present)	
		FILTER BED NO. 1	FILTER BED NO. 2
Sensitive Areas*	2	25	90

*Includes operating rooms and recovery rooms.

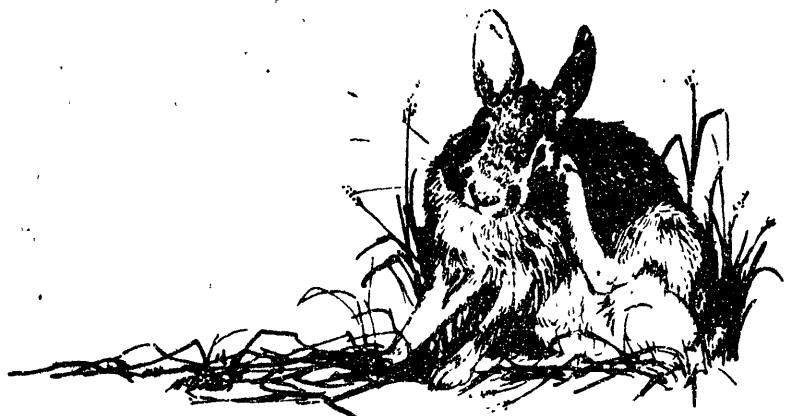
Note: Ratings shall be with tolerances of ARI Standard 680-74.

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 May 2, 1986.

TRD-8804140 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
July 12, 1986
For further information, please call
(512) 458-7245.



★ ★ ★

**Part VI. Statewide Health
Coordinating Council
Chapter 571. Health Planning
and Resource Development
State Health Plan**

★ 25 TAC §571.1

The Statewide Health Coordinating Council proposes an amendment to §571.1, concerning the state health plan. The amendment will present priority statewide health problems, develop recommendations designed to resolve these problems, and propose needed implementation strategies and resource requirements.

Carol S. Daniels, bureau chief, Bureau of State Health Planning and Resource Development, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Daniels also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increased awareness of the health problems in the state and knowledge about prevention activities. The public will also benefit from proposed recommendations to improve the availability and accessibility of health care services in the state. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Carol S. Daniels, Bureau Chief, Bureau of State Health Planning and Resource Development, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be received through June 6, 1986.

In addition, comments will be received at public hearings scheduled throughout the state. The time, date, and location of these hearings and the availability of copies for review of the plan are described in the notice titled "Public Hearings" published in the "In Addition" section of the *Texas Register* on Tuesday, May 6, 1986. Contact Ms. Daniel's office for exact locations.

The amendment is proposed under the Health Planning and Resources Development Act of 1974, Public Law 93-841, §1524, which provides the Statewide Health Coordinating Council with the authority to adopt a state health plan.

§571.1. State Health Plan for Texas. The Statewide Health Coordinating Council adopts by reference the document entitled, "The Texas State Health Plan, 1987 [1982-1986]." This document reflects a five-year planning period and has been published by the Statewide Health Coordinating Council and is available from the Bureau of State Health

Planning and Resource Development, Texas Department of Health, 1100 West 49th Street, Austin, Texas.

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 May 1, 1986.

TRD-8804135 Marlon R. Zetzman
Chairman
Statewide Health
Coordinating Council

Proposed date of adoption:
July 12, 1986
For further information, please call
(512) 459-7261.

★ ★ ★

**TITLE 28. INSURANCE
Part I. State Board of
Insurance
Chapter 5. Property and
Casualty Insurance
Subchapter D. Fire and Allied
Lines Insurance**

★ 28 TAC §5.3501

The State Board of Insurance proposes new §5.3501, concerning requirements for nonrate regulated insurers to report in accordance with the current Texas property statistical plan for residential and commercial risks. These reporting requirements apply to nonrate regulated insurers regulated under the Insurance Code, Chapters 17-19, and subject to the Insurance Code, Articles 5.35 and 5.36.

The statistical plan is adopted by reference to be applicable to Chapters 17-19 insurers. The statistical plan specifies detailed information to be maintained by insurers writing property and multiperil insurance business in this state. The information relates, among other matters, to premiums, losses, claims, and exposure. The plan also specifies the time and manner of reporting the information required to be maintained. The insurers specified are not required to use rates promulgated by the State Board of Insurance. Heretofore, these insurers have not been required to maintain and report information to the board in the manner required by this section.

A rapidly increasing amount of business has been written by these companies. Because of this, the board has determined that effective rate regulation requires that it must receive from these insurers the information specified in the statistical plan to maintain effective rate regulation for the lines of insurance specified. Rate regulation is an extremely important function of the board. It is now and has been

historically of paramount importance to the public in general. Such regulation ultimately is determinative of the amount the public pays for certain insurance and relates directly to the solvency of certain insurers.

With an effective date of October 17, 1985, the board first adopted §5.3501 on an emergency basis in the October 25, 1985, issue of the *Texas Register* (10 TexReg 4180). With an effective date of February 28, 1986, the board adopted on an emergency basis §5.3501, with additional language to make clear that the time and manner of reporting shall be as set forth in the current Texas property statistical plan for residential and commercial risks. The emergency section, with the additional clarifying language, appeared in the March 7, 1986, issue of the *Texas Register* (11 TexReg 1105).

G. J. (Jack) Jones, deputy insurance commissioner for the Property Insurance Program, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Except for possible administrative costs for insurance companies in completing forms and following instructions for reporting, there will be no fiscal implications to small businesses.

Mr. Jones also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more accurate and complete statistical basis for promulgation of rates by the State Board of Insurance. The possible economic cost to persons who are required to comply with the section as proposed will be the administrative costs in completing forms and following instructions. The cost will depend on each company's record-keeping practices and type of operation.

Public comment on the proposal is invited and may be submitted to G. J. (Jack) Jones, Deputy Insurance Commissioner for the Property Insurance Program, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Article 1.24; Article 17.25, §18; Article 18.12; and Article 19.08. Article 1.24 authorizes the board to address inquires to an insurance company or to any holder of any authorization under the Insurance Code in relation to its business and condition or any matter connected with its transactions which the board deems necessary for the protection of the public good or for a proper discharge of its duties, and requires each addressee to promptly answer such inquiries. Article 17.25, §18, authorizes the board, whenever it deems it advisable, to compel written reports from Chapter 17 companies respecting their condition. Article 18.12 authorizes

the board to require Lloyds plan insurers to file information with the board. Article 19.06 requires Chapter 19 insurers to furnish certain information and reports to the board.

§5.3501. *Statistical Reporting of Property and Multiperil Insurance by Insurers Regulated under the Insurance Code, Chapters 17-19.* Insurers regulated under the Insurance Code, Chapter 17-19, and subject to the Insurance Code, Articles 5.35 and 5.36, shall report in accordance with the current Texas property statistical plan for residential and commercial risks. The time and manner of reporting is as set forth in the statistical plan, which plan is adopted herein by reference. Copies of the statistical plan may be obtained by contacting the Staff Actuary, Property and Casualty Actuarial Division, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998, or by contacting the Texas Insurance Advisory Association, P.O. Box 15, Austin, Texas 78782.

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 May 5, 1986.

TRD-8604193 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Earliest possible date of adoption:

June 9, 1986

For further information, please call
(512) 463-8327.

★ ★ ★

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

★31 TAC §116.12

The Texas Air Control Board (TACB) proposes new §116.12, concerning review and continuance of operating permits. The Texas Clean Air Act (TCAA), as amended in 1985, mandates the review of each TACB operating permit every 15 years. The TCAA, §3.28(g), requires the TACB to establish, by rule, a deadline by which the holder of an operating permit shall submit an application for review, the general requirements to be met by the applicant, and the procedures for reviewing and acting on applications. Also, §3.28(g) contains guidelines and other requirements for notification of review, for the administrative process of permit review, continuance, and

denial, and for expiration of an operating permit. These guidelines and requirements, where applicable, are contained in the various subsections of the proposed new section.

Bennie Engelke, director of management and staff services, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for local government unless a local government elects to participate in the permit continuance review by routinely providing comments to the TACB. The fiscal implications for state government is an estimated additional cost of \$300,000 in 1987, \$600,000 in 1988, and \$1,010,000 in 1989-1991. Additional fee revenue for the TACB, based on \$1,750 for each permit continuance application, is estimated to be \$15,750 in 1987, \$178,500 in 1988, \$628,250 in 1989, \$771,750 in 1990, and \$987,000 in 1991. The TACB will be able to sustain the review consistent with the proposed criteria through fiscal year 1987 using existing resources. Beyond that time the review of permit continuance applications will be cursory, unless additional funds are provided through either appropriation of general revenue funds or legislative authority to expend funds collected from permit continuance fees. The fiscal impact on small business is no greater than that which would be incurred by large business. Costs to the regulated community, based on anticipated numbers of applications for review, are estimated collectively to be \$78,750 in 1987, \$892,500 in 1988, \$3,141,250 in 1989, \$3,658,750 in 1990, and \$4,935,000 in 1991.

Les Montgomery, P. E., director of the Technical Support and Regulation Development Program, has determined that the public benefit to be derived from the periodic review of TACB operating permits would be possible improvement in air quality from encouraging continuous compliance with permit specifications and more attention to control equipment maintenance.

A public hearing on this proposal is scheduled for 10 a.m. on May 28, 1986, in the auditorium of the TACB, located at 6330 Highway 290 East, Austin.

Copies of the proposed section are available from Barry Irwin, TACB central office, and at all TACB regional offices. Public comment, both oral and written, on the proposal is invited at the hearing. The TACB would appreciate receiving five copies of any written testimony before or at the hearing. Written testimony received by 4 p.m. on May 28, 1986, at the TACB central office will be included in the hearing record. Comments should be sent to the Control Strategy Division, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

The new section is proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the TACB with the authority

to make rules and regulations consistent with the general intent and purposes of the TCAA and to amend any rule or regulation the TACB makes.

§116.12. *Review and Continuance of Operating Permits.*

(a) Application for review and continuance of operating permit. The Texas Air Control Board (TACB) shall provide by mail, certified or registered, written notice to the holder of a permit that the permit is scheduled for review. Such notice will be provided no less than 180 days prior to the expiration of the 15th year following original issue or subsequent continuance of the operating permit. The notice shall specify the procedure for filing an application for review and continuance and the information to be included in the application. The application shall be completed by the holder of the permit and returned to the TACB within 60 days of receipt of the notice.

(b) Permit continuance requirements.

(1) In order to be granted a permit continuance, the owner or operator of the facility shall submit information in support of the application which demonstrates that:

(A) the emissions from the facility comply with all rules and regulations of the TACB and with the intent of the Texas Clean Air Act (TCAA), including protection of the health and physical property of the people. In considering the continuance of a permit of any facility within 3,000 feet or less of an elementary, junior high, or senior high school, the TACB shall consider any possible adverse short-term or long-term side effects that an air contaminant or nuisance odor from the facility may have on the individuals attending these school facilities;

(B) the facility is being operated in accordance with all requirements and conditions of the permit being considered for continuance and as represented in the application for permit to construct and for any previously granted continuance;

(C) the facility has appropriate means to measure the emission of significant air contaminants as determined by the executive director;

(D) the facility uses that control technology determined by the executive director to be economically reasonable and technically practicable considering the age of the facility and the impact of its emissions on the surrounding area;

(E) the emissions from the facility meet at least the requirements of any applicable new source performance standards promulgated by the Environmental Protection Agency (EPA) pursuant to authority granted under the Federal Clean Air Act (FCAA), §111, as amended;

(F) the emissions from the facility meet at least the requirements of any applicable emission standard for hazardous air pollutants promulgated by the EPA pursuant to authority granted under the FCAA, §112, as amended.

(2) The TACB shall review the compliance history of the facility in consideration of granting a permit continuance. If the applicant has a history of significant non-compliance with the rules and regulations of the TACB, the continuance shall not be granted.

(c) Public notification and comment procedures. The executive director shall mail a written notification to the permit holder within 30 days of receipt of a completed application for permit review and continuance, as determined by the executive director of the TACB. The notification will acknowledge receipt of the application and require the applicant to provide public notice of the application for permit continuance according to §116.7(b)(2), (3), and (4), of this chapter. When newspaper notices are published in accordance with §116.7(b)(2) and (3), the applicant for permit continuance shall furnish a copy of such notices and dates of publication to the TACB in Austin and all local air pollution control agencies with jurisdiction in the county in which the facility is located. Along with such notices furnished to the TACB, the applicant shall certify that the signs required by §116.7(b)(4) have been posted in accordance with the provisions of that paragraph.

(d) Continuance of permit. Subsequent to review, the executive director either shall continue a permit or deny continuance of the permit if the executive director determines that the permitted facility will not meet continuance requirements. The executive director shall notify the permit holder in writing of either action.

(1) If continuance is denied because of failure to meet requirements in subsection(b)(1) of this section, the executive director shall forward to the permit holder a report which describes the basis for the determination and establishes a schedule for compliance with continuance requirements. The report shall be forwarded to the permit holder no later than 180 days after the TACB receives a completed application and shall establish a final date by which the permit holder shall satisfy the continuance requirements. The permit shall be continued if the requirements are met according to the schedule specified in the report, and the executive director shall notify the permit holder in writing of the permit continuance. The executive director may extend the schedule for completion of continuance requirements if he determines that compliance with the original schedule is infeasible or unreasonable.

(2) If the continuance is denied because of a history of significant noncompliance with the rules and regulations of the TACB, pursuant to the review under subsection (b)(2) of this section, the executive director shall forward to the permit holder a report which describes the basis for the determination. The report shall be forwarded to the permit holder no later than 180 days after the TACB receives a completed application.

(e) Contested case hearing. In the event that the permit holder fails to satisfy the TACB requirements for corrective action by the deadline specified in the TACB report, the applicant shall be required to show cause in a contested case proceeding why the permit should not expire. The proceeding will be conducted pursuant to the requirements of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(f) Effective date of existing permit. An existing operating permit shall remain effective until it is continued, or until the deadline specified in the executive director's report to the permit holder, or until a date which may be specified in a board order which results from a contested case hearing held pursuant to subsection (e) of this section.

(g) Fee for review of operating permit. The holder of an operating permit to be reviewed for continuance by the TACB shall remit a fee, pursuant to the TCAA, §3.29(a), of \$1,750 with each continuance application. This fee shall be due and payable at the time application for review and continuance is filed with the TACB. All permit review fees shall be remitted in the form of a check or money order made payable to the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. Required fees must be received before the agency will consider an application to be completed.

(h) Failure to apply for review and continuance. An operating permit shall expire at the end of 15 years following the date of original issue or subsequent continuance if the permit holder fails to submit a completed application for review and continuance within 60 days after receiving notification from the TACB pursuant to subsection (a) of this section.

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 May 1, 1986.

TRD-8604174 Allen Eli Bell
Executive Director
Texas Air Control Board

Proposed date of adoption:
September 1, 1986
For further information, please call
(512) 451-5711, ext. 354.

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Part IX. Texas Water Commission

The following proposals submitted by the Texas Water Commission will be serialized beginning in the May 13, 1986, issue of the *Texas Register*. The earliest

possible date of adoption for the documents is June 9, 1986.

Chapter 313. Edwards Aquifer

Subchapter A. Edwards Aquifer in Medina, Bexar, Comal, Kinney, Uvalde, and Hays Counties
§§313.1-313.11
(new)

Subchapter B. Edwards Aquifer in Williamson County
§§313.21-313.30
(new)

Chapter 317. Design Criteria for Sewerage Systems

Design Criteria for Sewerage Systems
§§317.1-317.13
(new)

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Department of Human Services

Chapter 49. Child Protective Services

Eligibility for Child Protective Services

★ 40 TAC §49.337, §49.338

The Texas Department of Human Services proposes amendments to §49.337 and §49.338, concerning eligibility for adoption subsidies. The amendments add the eligibility requirements for Title IV-E subsidies for children who are not in the department's managing conservatorship but who are otherwise eligible for a subsidy. House Bill 581 gave the department the authority necessary to include these children in the adoption subsidy program as required in Public Law 96-272.

Clifton Martin, associate commissioner for programs, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections. The effect on state government will be a cost of \$10,898 for fiscal year 1986, \$68,155 for fiscal year 1987, \$95,275 for fiscal year 1988, \$124,722 for fiscal year 1989, and \$156,715 for fiscal year 1990. There is no effect on local government or small businesses.

Mr. Martin also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a reduction in economic barriers to adoption for handicapped children who are not in the department's care. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Support Division-219, Texas Department of Human Services, 153-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and Chapter 47, which authorizes the department to administer a program to promote the adoption of hard-to-place children.

§49.337. Eligibility Requirements for Adoption Subsidies. For a child to receive an adoption subsidy, the following requirements apply.

(1) The child must be in DHR's managing conservatorship at the time of adoptive placement.]

(1)[(2)] The [DHR] unit responsible for placing the child must first try to place the child without the subsidy, unless the child is being adopted by the child's foster parents.

(2)[(3)] The child must meet one of the following criteria at the time of adoptive placement:

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

(3)[(4)] The child's income must be less than DHS' [DHR's] daily rate for foster care maintenance for a child his age in a foster family home.

(4)[(5)] The child must be less than 18 years old. The child may receive a subsidy through the month of his 18th birthday

(5)[(6)] The child must not be receiving foster care benefits in the adoptive home.

(6)[(7)] The adoptive parents must apply for the subsidy before consummation of the child's adoption.

(7)[(8)] The adoptive parents must meet DHS' [DHR's] standards and criteria for adopting a child.

(8)[(9)] The adoptive parents must be contributing to the child's financial support.

§49.338. Additional Eligibility Requirements for Title IV-E Subsidy.

(a) For a child in DHS' managing conservatorship to receive a Title IV-E subsidy, the following additional requirements apply.

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

(b) For a child not in DHS' conservatorship to qualify for a Title IV-E subsidy, the following requirements apply.

(1) At the time the child is placed for adoption, a child care or child placing agency licensed by the Texas Department of Human Services or by a Texas state agency must hold court-appointed managing conservatorship of the child.

(2) Parental rights to the child must be terminated before the petition to adopt was filed.

(3) During the period between filing of the petition to adopt and the court order for adoption, the child must have been eligible to receive supplemental security income (SSI).

(4) The adoptive parents must apply for the subsidy and the subsidy must be approved before the adoption is consummated.

(5) The child's adoption must be consummated.

(6) The adoptive parents must be contributing to the child's financial support.

(7) Any income the child receives related to his biological parents (RSDI, VA) must be less than the department's daily rate for foster care maintenance for a child his age in a foster family home.

(8) The child must be under 18 years of age. The child may receive a subsidy through the month of his 18th birthday.

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 May 5, 1986.

TRD-8604198

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Earliest possible date of adoption:
June 9, 1986
For further information, please call
(512) 450-3766.

★ ★ ★

Adopted

Rules An agency may take final action on a rule 30 days after a proposal has been published in the *Texas 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 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 17. Marketing Division Livestock Export Facilities

★4 TAC §17.31

The Texas Department of Agriculture adopts an amendment to §17.31, without changes to the proposed text published in the March 25, 1986, issue of the *Texas Register* (11 TexReg 1498).

The amendment to §17.31 is made to bring the amount of revenues generated from the use of the Texas Department of Agriculture livestock export facilities closer to the actual costs of operation, in accordance with the intent of the 69th Legislature, 1985.

The initial fee period is reduced to encourage quicker turnover in the use of facilities. The establishment of a separate category for hogs is due to a higher overhead required for the holding of hogs. The small pen category for hogs, sheep, and goats is eliminated because of lack of use.

The amendment to §17.31, concerning the operation of livestock export facilities, reduces the number of hours in the initial fee period in which livestock is held at the facilities; increases the per head fees for cattle, calves, horses, and mules held in pens for longer than 24 hours, and increases the fee for use of stalls for any length of time; increases the per head fees for sheep and goats, and slaughter sheep and goats, held for any length of time; adds a separate category for hogs; eliminates the small pen category for hogs, sheep, and goats; and eliminates the individual stall and individual pen categories.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §146.021, which provides the Texas Department of Agriculture with the authority to receive and hold for processing animals transported in international trade, and establish and collect reasonable fees for such holding and other expenses.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 28, 1986.

TRD-8604099

Dolores Alvarado Hibba
Director of Hearings
Texas Department of
Agriculture

Effective date: June 1, 1986

Proposal publication date: March 25, 1986

For further information, please call
(512) 463-7583.



Chapter 19. Seed Division Texas Seed Law

★4 TAC §19.10

The Texas Department of Agriculture adopts an amendment to §19.10, without changes to the proposed text published in the March 21, 1986, issue of the *Texas Register* (11 TexReg 1429).

The amendment is adopted so that §19.10 (6) will be consistent with changes made to the Texas Agriculture Code, Chapter 61, by the 69th Legislature, 1985.

The amendment to §19.10(6) changes the statutory citation for the provision of Chapter 61, which requires that the name and address of a firm obtaining a vegetable seed license appear on the seed label.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, §61.002, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement of Chapter 61. The Texas Seed Law, Chapter 61, authorizes the department to classify noxious weeds and establish the method of sampling, inspection, analysis, testing, and tolerances to be allowed in agricultural, vegetable, and treated seeds.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604114

Dolores Alvarado Hibba
Director of Hearings
Texas Department of
Agriculture

Effective date: May 23, 1986

Proposal publication date: March 21, 1986

For further information, please call
(512) 463-7583.

Part II. Texas Animal Health Commission

Chapter 35. Brucellosis Subchapter A. Eradication of Brucellosis

★4 TAC §35.4, §35.5

The Texas Animal Health Commission adopts amendments to §35.4 and §35.5, without changes to the proposed text published in the March 4, 1986, issue of the *Texas Register* (11 TexReg 1076).

A petition was received from the ranching industry in Dimmit County requesting this county be transferred to the Class B area from the Class C area. Dimmit County met all the requirements for transfer.

Dimmit County is transferred from the Class C area to the Class B area.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to provisions of the Texas Agriculture Code, Texas Civil Statutes, Chapters 161 and 163. These statutes provide the commission with authority to adopt rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

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 May 2, 1986.

TRD-8604176

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Effective date: May 23, 1986

Proposal publication date: March 4, 1986

For further information, please call
(512) 479-6697.

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, 9.2, 9.6-9.8

The Texas Department of Community Affairs (TDCA) adopts amendments to §§9.1, 9.2, and 9.6-9.8. Amendments to §§9.1, 9.6, and 9.7 are adopted with changes to the proposed text published in the April 1, 1986, issue of the *Texas Register* (11 TexReg 1603). Amendments to §9.2 and §9.8 are adopted without changes and will not be republished.

The amendments govern the allocation of federal fiscal year 1986 community development block grant (CDBG) nonentitlement area funds under the community development, urgent need, and statewide area revitalization funds of the Texas Community Development Program (TCDFP) and the requirements for regional review committees.

The amendments establish the standards and procedures by which the TDCA will allocate community development, urgent need, and statewide area revitalization funds to eligible units of local government in Texas beginning with the expenditure of federal fiscal year 1986 funds. The amendment to §9.1 provides clarification and changes requirements relating to joint applications, citizen participation, and substitution of standardized data. The amendment also establishes performance threshold requirements for the economic development project and special impact funds and interim financing. The amendment to §9.6 concerns requirements for membership on the regional review committees and notices of meetings and provides clarification.

No comments were received regarding adoption of the amendments. However, the TDCA has made changes from the proposed text of the amendments to correct errors and to provide clarification. In addition, based on comments received at public hearings held concerning the 1986 TCDFP, the performance threshold for economic development projects has been changed to take effect May 1, 1987. See §9.1(i)(5). Section 9.8(c)(1)(A) has been changed to allow published newspaper articles to satisfy the notice requirement for regional review committee meetings in certain circumstances.

The amendments are adopted under Texas Civil Statutes, Article 4413(201), §4A, which provide the TDCA with the authority to allocate federal community development block grant nonentitlement area funds to

eligible units of general local government in Texas in accordance with rules and regulations adopted by the TDCA.

§9.1. General Provisions.

(a) (No change.)

(b) Overview. Community Block Grant nonentitlement area funds will be distributed by the Texas Community Development Program to eligible units of general local government in the following program areas:

- (1) community development project fund;
- (2) economic development project fund;
- (3) planning/capacity building fund;
- (4) emergency fund;
- (5) urgent need fund;
- (6) statewide area revitalization fund;
- (7) special impact fund;
- (8) interim financing fund.

(c) Types of applications.

(1) (No change.)

(2) Joint applications. Subject to approval by the TDCA and subject to each participating community satisfying the application requirements of the Texas Community Development Program fund under which the application is submitted, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. However, any community participating in a joint application may not submit a single jurisdiction application under the project fund for which the joint application was submitted. A joint application solely for administrative convenience will not be accepted. One of the participating communities must be primarily accountable to the TDCA for financial compliance and program performance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates Texas Community Development Program requirements. In the case of a joint application submitted by two units of general local government, not more than 75% of the beneficiaries of the application may reside in any one applicant's jurisdiction. In the case of a joint application submitted by three local governments, not more than 50% of the beneficiaries of the application may reside in any one applicant's jurisdiction. Not less than 10% of the beneficiaries of an application may reside in any one applicant's jurisdiction in the case of a joint application submitted by more than three local governments.

(d) Ineligible activities. Any type of activity not described or referred to in the federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 *et seq.*) is ineligible for funding under the Texas Community Development Program. Specific ineligible activities include but are not limited to construction of build-

ings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except in cases of replacement housing when individuals are displaced by Texas Community Development Program activities; the financing of political activities; purchases of construction equipment; income payments, such as housing allowances; most operation and maintenance expenses; and pre-contract costs, such as application preparation fees paid prior to submittal of the application.

(e) Citizen participation. Prior to submitting an application, an applicant for Texas Community Development Program funding must:

(1) (No change.)

(2) publish notice of each hearing in a newspaper having general circulation in the municipality or county at least 72 hours 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 local government as appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this paragraph will be accepted by the TDCA in lieu of publication of notices.

(f) (No change.)

(g) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the Texas Community Development Program:

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

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

(j) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the TDCA and must follow the procedures prescribed in the instructions to the survey instrument. An applicant that intends to use a survey must notify the TDCA of its intent prior to conducting the survey. Only door-to-door surveys will be allowed. Surveys, including tabulation sheets and all responses, must be submitted to the TDCA at least 30 days prior to the date on which the application is due, for verification and spot checking. A survey instrument that lacks any information will be considered as a nonresponse for that family. Except for satisfying the 51% benefit to low- and moderate-income persons threshold requirement for planning/capacity building applications, substitution of data for scoring community distress factors and for determining total beneficiaries will require a 100% effort with at least an 80% response rate. Substitution of data to satisfy the 51% benefit to low- and moderate-income persons threshold requirement for planning/capacity building applications, will require a 75% effort with at least a 75% response rate. A survey that was completed after the 1983

program year for a previous Texas Community Development Program application may be accepted by the TDCA for a new application to the extent specified in the most recent application package for the proposed project.

(k) (No change.)

(l) Performance threshold requirements.

(1) Applicability. In addition to the requirements of subsection (g) of this section, this subsection applies to all contractors that have received financial assistance from the TDCA under any project fund and that are applying for additional Texas Community Development Program funds.

(2) (No change.)

(3) Community development project fund, statewide area revitalization fund, and special impact fund contracts. In order to be eligible to apply for Texas Community Development Program funding, an applicant must have completed all activities under such contracts (with the exception of audit and closeout) which were funded utilizing money from at least two program years prior to the program year in which additional Texas Community Development Program funds are being requested. If the effective date of such a contract is one year or less before the date of the current application deadline, the applicant must have begun all construction activities under the contract in order to be eligible to apply for Texas Community Development Program funding.

(4) Emergency fund, urgent need fund, discretionary funding, and interim financing contracts. In order to be eligible to apply for Texas Community Development Program funding, an applicant must have completed all activities under such contracts (with the exception of audit and closeout) within one year after the effective date of such contracts. This subsection takes effect beginning with federal fiscal year 1985 funded contracts.

(5) Economic development project contracts. In order to be eligible to apply for economic development funding, an applicant must have completed all activities under such contracts (with the exception of audit and closeout) which were funded utilizing money from at least one program year prior to the program year in which economic development funds are being requested. This subsection takes effect May 1, 1987.

(m) Unobligated and recaptured funds. Any additional funds resulting from the recapture of dollars from a prior year's allocation, recapture of program income, unobligated funds from a program area specified in subsection (b) of this section, or reallocated funds which the United States Department of Housing and Urban Development has recaptured from small cities grantees may be redistributed to eligible communities at the discretion of the executive director of the TDCA within such program areas.

§9.6. Regional Review Committees.

(a) Composition. There is a regional review committee in each of the 24 state planning regions. Each committee consists of at least 12 members appointed by the governor, each of whom must be a member of the governing body of an eligible unit of general local government. A member vacates his position on a regional review committee when he ceases to be such a local elected official but shall continue to serve until a successor is appointed. Composition of each regional committee reflects geographic diversity within the region, difference in population among eligible localities, and types of government (general law cities, home rule cities, and counties). The chairman of the committee is also appointed by the governor. Members of the committee will serve two-year terms. An individual may not serve as a member of a regional review committee while serving as a member of the state community development review committee.

(b) Role. Each regional review committee will review and score all applications submitted from within its region under the Community Development Project Fund. Each regional review committee may review and comment on other Texas Community Development Program applications. Each regional review committee will send its scores and comments to the TDCA. Regional review committees may elect to utilize staff of regional planning commissions to assist with project review responsibilities.

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current regional review committee guidebook, and the procedures established by the regional review committee under the Texas Community Development Program.

(1) Meetings. Each meeting held by a regional review committee shall conform to the following requirements.

(A) Except for notices concerning appeals, the regional review committee shall notify each applicant within the regional review committee's state planning region, in writing, of the date, time, and location of the meeting at least five days prior to the meeting. The notice must be in the format specified by the TDCA in the most recent regional review committee guidebook. The notice must also be published in a regional newspaper at least five days prior to the meeting. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the TDCA in lieu of publication of notices. The scoring procedures established at a regional review committee's organizational meeting must also be sent to

each eligible applicant in the committee's region at least five days prior to its scoring meeting.

(B) Each applicant shall be provided with the opportunity to make a presentation to the regional review committee at its scoring meeting.

(C)-(E) (No change.)

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

(d) Appeals. An applicant may appeal the actions of the regional review committee established in its state planning region by following the procedures set forth in this subsection. The TDCA will withhold the running of computer scores on Community Development Project Fund applications for five working days after the regional review committee's scoring meeting or until all regional appeals, if any, have been resolved, whichever is longer. If an appeal affects another applicant within its region, the regional review committee must provide written notification of the appeal to that applicant.

(1) (No change.)

(2) Within 10 working days after receipt of an appeal, the regional review committee shall take one of the following actions.

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

(C) The regional review committee disagrees and provides the applicant and the TDCA with a written statement of the basis of the disagreement. The regional review committee may hold a rehearing if so requested by the applicant, as long as both the initial hearing and the rehearing are held within 10 working days after the receipt of the original appeal.

(3)-(5) (No change.)

(e) (No change.)

§9.7. Urgent Need Fund.

(e) General Provisions. Assistance under this fund will be provided only to eliminate existing conditions which pose a serious and immediate threat to the health or welfare of the residents of the applicant where other financial resources are not available to meet such conditions. A unit of general local government that wishes to receive assistance under this fund must submit an application, as provided by the TDCA, to the Community Development and Housing Division of the TDCA. There is no application deadline. An applicant may not submit an application under this fund and also under the Community Development Project Fund, the Statewide Area Revitalization Fund or the Special Impact Fund during the same program year if the proposed activity under each application is the same or substantially similar. An applicant may submit only one application under this fund in any one program year. The TDCA may negotiate the level of funding to be provided to an applicant and the scope of work to be performed by the applicant.

(b) (No change.)

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

Issued in Austin, Texas, on May 2, 1986.

TRD-8604182 Douglas C. Brown
General Counsel
Texas Department of
Community Affairs

Effective date: May 26, 1986
Proposal publication date: April 1, 1986
For further information, please call
(512) 834-8060.

★ ★ ★



★ 10 TAC §9.9

The Texas Department of Community Affairs (TDCA) adopts new §9.9, without changes to the proposed text published in the March 28, 1986, issue of the *Texas Register* (11 TexReg 1542).

The new section governs the standards and procedures by which the TDCA will allocate federal fiscal year 1986 community development block grant (CDBG) non-entitlement area funds under the special impact fund of the Texas Community Development Program. The new section establishes the special impact fund under which eligible counties may receive funding for water, sewer, streets, and drainage improvements projects that serve severely distressed unincorporated areas of counties.

The new section covers general requirements, the funding cycle, and selection procedures and criteria.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4413(201) §4A, which provide the TDCA with the authority to allocate federal community development block grant nonentitlement area funds to eligible units of general local government in Texas in accordance with rules and regulations adopted by the TDCA.

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 May 2, 1986.

TRD-8604166 Douglas C. Brown
General Counsel
Texas Department of
Community Affairs

Effective date: May 23, 1986
Proposal publication date: March 28, 1986
For further information, please call
(512) 834-8080.

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TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System

Chapter 25. Administrative Council

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

★ 19 TAC §§25.32, 25.34, 25.49

The Coordinating Board, Texas College and University System adopts amendments to §§25.32, 25.34, and 25.49, without changes to the proposed text published in the January 28, 1986, issue of the *Texas Register* (11 TexReg 497)

These amendments clarify the intent in the rules and regulations concerning a retiree's eligibility for insurance coverage.

These amendments specify that the definition of employee will not include retired employee if excluded specifically in a section; clarify when pre-existing conditions, limitations, and evidence of insurability may be required when a retired employee is enrolling for coverage in a retiree plan; and remove from the automatic coverage provisions regarding any reference to a retired employee.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Insurance Code, Article 3.50-3, §4(b)(4)(G), which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provisions of this Act to carry out statutory responsibilities.

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 May 2, 1986.

TRD-8604222 James McWhorter
Executive Secretary
Administrative Council
Coordinating Board, Texas
College and University
System

Effective date: May 26, 1986
Proposal publication date: January 28, 1986
For further information, please call
(512) 462-6420.

★ ★ ★

★ 19 TAC §25.33

The Coordinating Board, Texas College and University System adopts an amendment to §25.33, without changes to the proposed text published in the January 28, 1986, issue of the *Texas Register* (11 TexReg 498).

This amendment will provide benefits for the treatment of alcohol dependency that are not less favorable than benefits for other physical illnesses generally in conformance with the Insurance Code, Article 3.51-9, as amended by Senate Bill 544, 69th Legislature, 1985.

This amendment would remove from the rules and regulations the restrictions and/or limitations of benefits for the treatment of alcohol dependency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Insurance Code, Article 3.50-3, §4(b)(4)(G), which provides the Administrative Council with the authority to adopt rules and regulations consistent with the provisions of this Act to carry out statutory responsibilities.

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 May 2, 1986.

TRD-8604221 James McWhorter
Executive Secretary
Administrative Council
Coordinating Board, Texas
College and University
System

Effective date: May 26, 1986
Proposal publication date: January 28, 1986
For further information, please call
(512) 462-6420.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 4. General Rules of Practice and Procedures

The General Land adopts new §§4.1-4.6, 4.21-4.25, 4.41-4.49, 4.61-4.63, 4.71-4.79, 4.91-4.100, 4.111-4.118, 4.131-4.133, 4.141-4.144, and 4.151-4.156, without changes to the proposed text published in the March 21, 1986, issue of the *Texas Register* (11 TexReg 142).

The new sections concern practice and procedure in contested case proceedings where notice and hearing is required. These sections govern the procedure for the institution, conduct, and determination of contested case proceedings before the General Land Office, including disputes involving an amount of royalty or penalty assessed by the General Land Office, an action to reinstate a terminated lease, or an action to reinstate a forfeited lease or landowner's agency rights.

These new sections provide a means for review of agency action in any lease termination, lease forfeiture, landowner agency forfeiture, or royalty deficiency assessment. The new sections specify the pro-

cedure by which state lessees and/or land-owner agents may seek a redetermination of any contested case proceeding before the General Land Office.

No comments were received regarding adoption of the new sections.

Subchapter A. Definitions and General Procedures

★31 TAC §§4.1-4.6

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604187 Garry Mauro
Commissioner
General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

★ ★ ★

Subchapter B. Parties

★31 TAC §§4.21-4.25

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604185 Garry Mauro
Commissioner
General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

Subchapter C. Pleadings

★31 TAC §§4.41-4.49

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604188 Garry Mauro
Commissioner
General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

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Subchapter D. Docketing and Notice

★31 TAC §§4.61-4.63

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604186 Garry Mauro
Commissioner
General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

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Subchapter E. Prehearing Proceedings

★31 TAC §§4.71-4.79

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604194 Garry Mauro
Commissioner
General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

★ ★ ★

Subchapter F. Hearings

★31 TAC §§4.91-4.100

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604189 Garry Mauro
Commissioner
General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

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Subchapter G. Evidence

★31 TAC §§4.111-4.118

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604184 Garry Mauro
 Commissioner
 General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

★ ★ ★

Subchapter H. Examiner's Proposal for Decision and Relation Actions

★31 TAC §§4.131-4.133

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604190 Garry Mauro
 Commissioner
 General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

★ ★ ★

Subchapter I. Orders

★31 TAC §§4.141-4.144

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604192 Garry Mauro
 Commissioner
 General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009

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Subchapter J. Ancillary Proceedings and Proceedings Beyond the Order

★31 TAC §§4.151-4.156

The new sections are adopted under the Natural Resources Code, §31.051 and §52.001 *et. seq.*, which provides the commissioner of the General Land Office with the authority to make and enforce suitable rules consistent with the law and to verify that proper royalty is collected from state lessees. Additional statutory authority is found in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, which provide minimum standards of uniform practice and procedure for state agencies.

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

Issued in Austin, Texas, on April 30, 1986.

TRD-8604191 Garry Mauro
 Commissioner
 General Land Office

Effective date: May 26, 1986
Proposal publication date: March 21, 1986
For further information, please call
(512) 463-5009.

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Part IX. Texas Water Commission

The following adoptions submitted by the Texas Water Commission will be serialized beginning in the May 13, 1986, issue of the *Texas Register*. The effective date of the adoptions is May 26, 1986.

Chapter 30i Levee Improvement Districts, Plans of Reclamation, and Levees and Other Improvements

Subchapter A General Provisions
§§301.1-301.6
(new)

Subchapter B Levee Improvement Districts and Approval of District Plans of Reclamation
§§301.21-301.23
(new)

Subchapter C. Approval of Levees and Other Improvements
§§301.31-301.46
(new)

Subchapter D Notice of Hearing
§§301.51-301.56
(new)

Subchapter E Unauthorized Levees and Other Improvements
§§301.61-301.63
(new)

Subchapter F. Fees
§§301.71-301.74
(new)

Subchapter G. Districts to File Information with Executive Director
§301.81
(new)

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 §211.97, §211.99

The Texas Commission on Law Enforcement Officer Standards and Education adopts new §211.97 and §211.99, without changes to the proposed text published in the January 28, 1986, issue of the *Texas Register* (11 TexReg 540).

The new sections are mandated by House Bill 1592, 69th Legislature, 1985.

The commission is required to adopt sections raising to 21 years of age the minimum entry level age requirement for licensing as a peace officer or reserve law enforcement officer; to adopt sections which allow a law enforcement agency to petition the commission for a temporary probationary license for a peace officer or reserve law enforcement officer. Ap-

plicants who are 18 years of age or older and attending a basic police training course or have completed a basic police training course on the effective date of new §211.07 will be grandfathered. Law enforcement agencies which substantiate a manpower shortage may petition the commission for a temporary probationary license which has been designated as a provisional license under adopted new §211.99.

No comments were received regarding adoption of the sections.

The new sections are adopted under Texas Civil Statutes, Article 4413(29aa), §6(b)(2) and §6(q), which provide the Texas Commission on Law Enforcement Officer Standards and Education with the authority to adopt rules raising to 21 years of age the minimum entry level age requirement for licensing as a peace officer or reserve law enforcement officer, and adopt rules to allow a law enforcement agency to petition for a temporary probationary license for a peace officer or reserve law enforcement officer when the law enforcement agency can substantiate that it has a manpower shortage.

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 May 2, 1986.

TRD-8604141

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

Effective date: July 1, 1986
Proposal publication date: January 28, 1986
For further information, please call
(512) 834-9222.

**TITLE 40. SOCIAL
SERVICES AND
ASSISTANCE**
**Part III. Texas Commission
on Alcohol and Drug
Abuse**
**Chapter 149. Project Support
Procedures**
Project Support Procedures
★40 TAC §149.32

The Texas Commission on Alcohol and Drug Abuse adopts the repeal of §149.32, without changes to the proposed text published in the November 29, 1985, issue of the *Texas Register* (10 TexReg 4630).

The repealed section is outdated due to passage of Senate Bill 601, 69th Legislature, 1985.

The repeal is concurrent with the adoption of new sections that reflect the commission's current statutory authority, policies, and interpretation in a recognized rule structure.

No comments were received concerning adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5561c-2, §1.12, 69th Legislature, 1985, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to adopt rules governing the functions of the commission, including rules that prescribe the policies and procedures followed by the commission in the administration of any commission programs.

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.

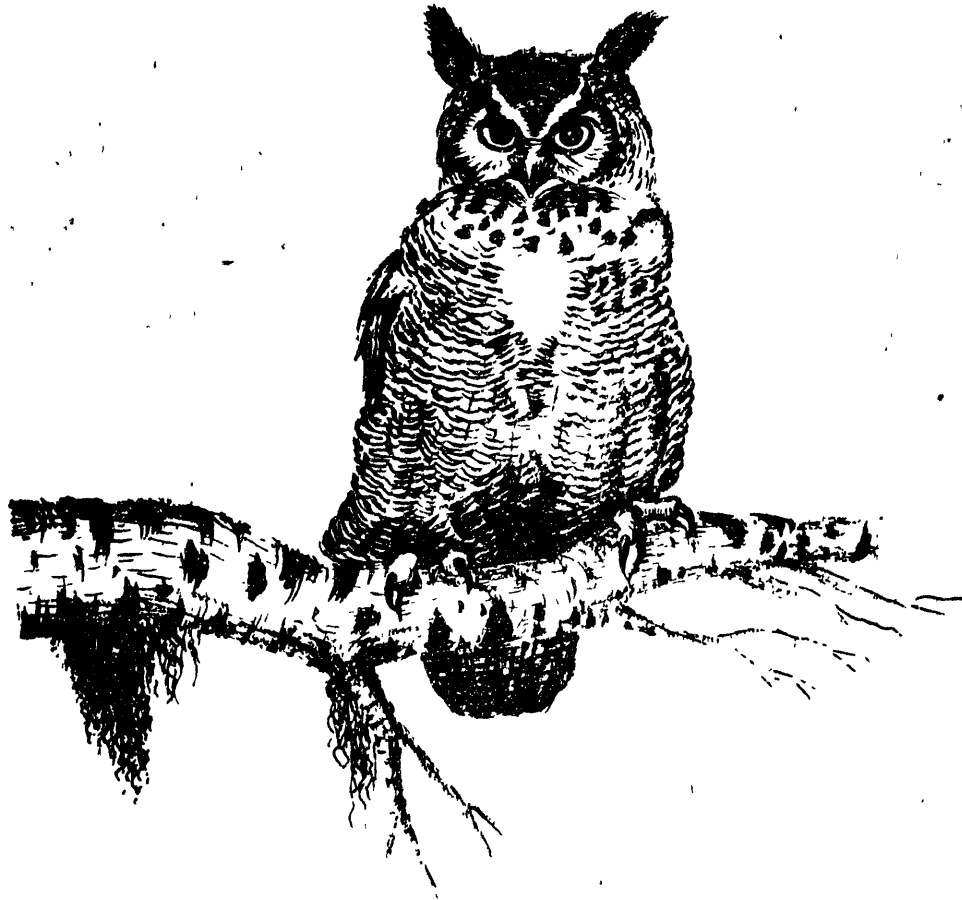
Issued in Austin, Texas, on May 1, 1986.

TRD-8604121

Ross Newby
Executive Director
Texas Commission on
Alcohol and Drug
Abuse

Effective date: June 23, 1986
Proposal publication date: November 29, 1985
For further information, please call
(512) 463-5510.

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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 Adult Probation Commission

Thursday, May 8, 1986, 2 p.m. The Audit Review Committee of the Texas Adult Probation Commission met in emergency session in Suite 600, Building B, 8100 Cameron Road, Austin. According to the agenda, the committee discussed the fiscal audit report; final reviews of Bastrop County, Brown County, Dawson County, Deaf Smith County, Ellis County, Falls County, Fayette County, Jones County, Milam County, Moore County, Reeves County, Tarrant County, Travis County, Walker County; and initial reviews of Bexar County, Duval County, Harris County, Hidalgo County, Hill County, Jim Wells County, Matagorda County, McLennan County, Morris County, Smith County, Tyler County, and Victoria County. The emergency status was necessary because information was not received in time to complete the agenda.

Contact: Virginia Grote, Suite 600, Building B, 8100 Cameron Road, Austin, Texas 78753, (512) 834-8188.

Filed: May 1, 1986, 11:56 a.m.
TRD-8604087

Thursday, May 8, 1986, 2 p.m. The Program Committee of the Texas Adult Probation Commission met in emergency session in Suite 600, Building B, 8100 Cameron Road, Austin. According to the agenda, the committee considered funding priorities for fiscal year 1987; the standard condition for grant awards in fiscal year 1987; the impact of the ISP cutback; supplemental funding for McCulloch County; restitution centers; the Montgomery County application for implementation; the Jefferson County budget adjustment; the Midland County budget adjustment; misdemeanor probation including managing the change and the project update; and waivers to standards. The emergency status was necessary because information was not received in time to complete the agenda.

Contact: Virginia Grote, Suite 600, Building B, 8100 Cameron Road, Austin, Texas 78753, (512) 834-8188.

Filed: May 1, 1986, 11:56 a.m.
TRD-8604086

Friday, May 9, 1986, 9 a.m. The Texas Adult Probation Commission will meet in Suite 600, Building B, 8100 Cameron Road, Austin. According to the agenda, the commission will introduce guests; review minutes; the financial report, the Program Services report; the funding priorities for fiscal year 1987; standard conditions for grant awards in fiscal year 1987; the impact of the ISP cutback; supplemental funding for McCulloch County; restitution centers; the Montgomery County application for implementation; the Jefferson County budget adjustment; the Midland County budget adjustment; misdemeanor probation including managing the change and the project update; waivers to standards; the Data Services report; statistical reports; the Fiscal Services report; the Audit Review Committee report; the Executive Division report; standards; the Electronic Monitoring and House Arrest Committee report; the Sunset Advisory Commission report; the budget; and administrative business.

Contact: Virginia Grote, Suite 600, Building B, 8100 Cameron Road, Austin, Texas 78753, (512) 834-8188.

Filed: May 1, 1986, 11:57 a.m.
TRD-8604085

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Texas Department of Agriculture

The Texas Department of Agriculture will meet at the Texas Department of Agriculture District Office, Expressway 83, two blocks west of Morningside Road, San Juan. Days, times, and agendas follow.

Monday, May 19, 1986, 1 p.m. According to the agenda, the department will review an

alleged violation of the Texas Agriculture Code, §76.201(e) and §76.114, by Hershel White, doing business as Norman & White Aero.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711 (512) 463-7583.

Filed: May 5, 1986, 9:06 a.m.
TRD-8604228

Tuesday, May 20, 1986, 10 a.m. According to the agenda, the department will review an alleged violation of the Texas Agriculture Code, §76.116(a)(1), by James and Larry Wayne Skalitsky doing business as Rio Grande Aviation.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711 (512) 463-7583.

Filed: May 5, 1986, 9:06 a.m.
TRD-8604227

Tuesday, May 20, 1986, 1:30 p.m. According to the agenda, the department will review an alleged violation of the Texas Agriculture Code, §76.116(a)(1), by Ed Shores and Hunt Shores Ag Air, Inc.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711 (512) 463-7583.

Filed: May 5, 1986, 9:07 a.m.
TRD-8604226

Wednesday, May 21, 1986, 10 a.m. According to the agenda, the department will review an alleged violation of the Texas Agriculture Code, §76.116(a)(1) and (2), by John Houston, holder of a commercial applicator license.

Contact: Deborah E. Brown, P.O. Box 12847, Austin, Texas 78711 (512) 463-7583.

Filed: May 5, 1986, 9:07 a.m.
TRD-8604224

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Texas Animal Health Commission

Friday, May 2, 1986, 9 a.m. The Texas Animal Health Commission (TAHC) made an emergency addition to the agenda for a meeting held in the First Floor Conference Room, 210 Barton Springs Road, Austin. The addition concerned an executive session. The emergency status was necessary because the commission needed to discuss with the legal representative matters contained in a letter received on April 28, 1986, at 4:30 p.m. from a former TAHC employee.

Contact: Jo Anne Conner, 1020 Sam Houston Building, 201 East 14th Street, Austin, Texas 78701, (512) 479-6697.

Filed: May 1, 1986, 3:49 p.m.
TRD-8604105

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Texas Board of Architectural Examiners

Friday, May 16, 1986, 9 a.m. The Texas Board of Architectural Examiners will meet in Suite 107, 8213 Shoal Creek Boulevard, Austin. According to the agenda, the examiners will approve minutes; discuss rules and regulations; revocation hearings; reinstatements; reciprocal licensing; examinations; the Intern Development Program; alleged violations; the Texas Society of Architects Report; and legislation.

Contact: Robert H. Norris, Room 107, 8213 Shoal Creek Boulevard, Austin, Texas 78758, (512) 458-1363.

Filed: May 2, 1986, 10:28 a.m.
TRD-8604120

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Battleship Texas Advisory Board

Saturday, May 17, 1986, 10 a.m. The Battleship Texas Advisory Board will meet at the Battleship Texas, 3527 Battleground Road, La Porte. Items on the agenda include the approval of minutes; the report on finances and request approval of expenses; the report on the projected fundraising activities; and discussion on subjects of their choosing by the board members. The board also will meet in executive session to review of contractual agreement if necessary.

Contact: Doug Williams, Suite 601, 3033 Chimney Rock, Houston, Texas 77056, (713) 783-7200.

Filed: May 5, 1986, 1:52 p.m.
TRD-8604259

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East Texas State University

Committees of the Board of Regents of East Texas State University (ETSU) met in the McDowell Administration Building board

room, ETSU, Commerce. Days, times, committees, and agendas follow.

Thursday, May 8, 1986, 1:30 p.m. The Campus Planning and Finance Committee discussed the fiscal year 1987 budget and adjustment in the fiscal year 1986 operating budget for Commerce and Texarkana; the music endowment fund; authorization to seek coordinating board approval for housing renovation projects; the selection of an engineer for the mechanical systems renovation project, and the energy conservation retrofit projects; traffic and safety regulations; the facilities rate schedule; and the disposal of surplus property.

Contact: Dayton T. Cole, East Texas State University, Commerce, Texas 75428, (214) 886-5539.

Filed: May 5, 1986, 7:38 a.m.
TRD-8604232

Thursday, May 8, 1986, 3:30 p.m. The Academic Affairs Committee discussed the Commerce Faculty Workload Report; the Texarkana Faculty Workload Report; the Commerce Undersized Class Report; the Texarkana Undersized Class Report; faculty promotions of Commerce and Texarkana; the policy on shortened format courses; the intellectual property policy; and curricula changes in Texarkana.

Contact: Dayton T. Cole, East Texas State University, Commerce, Texas 75428, (214) 886-5539.

Filed: May 2, 1986, 10:41 a.m.
TRD-8604124

Thursday, May 8, 1986, 4:15 p.m. The Executive Committee discussed the mission statement; employee training policy; the holiday schedule of Commerce and Texarkana; and the board bylaws policy. The board also met in executive session.

Contact: Dayton T. Cole, East Texas State University, Commerce, Texas 75428, (214) 886-5539.

Filed: May 2, 1986, 10:42 a.m.
TRD-8604123

Friday, May 9, 1986, 9 a.m. The Board of Regents will meet in the McDowell Administration Building boardroom, ETSU, Commerce. According to the agenda summary, the board will consider the faculty workload and undersized class reports; faculty promotions; the policy on shortened format courses; policies on intellectual property, employee training, and board bylaws; curricula changes; fiscal year 1987 operating budgets and adjustments to the fiscal year 1986 budget; authorization to seek the coordinating board approval for housing renovation projects; the selection of an engineer for the mechanical systems renovation; traffic and safety regulations; housing facilities-rate schedule; disposal of surplus property; the mission statement; and holiday schedules. The board also will meet in executive session.

Contact: Dayton T. Cole, East Texas State University, Commerce, Texas 75428, (214) 886-5539.

Filed: May 5, 1986, 7:37 a.m.
TRD-8604234

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Texas Employment Commission

Tuesday, May 13, 1986, 8:30 a.m. The Texas Employment Commission will meet in Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will review prior meeting notes; internal procedures of commission appeals; tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 19; and set the date of the next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: May 5, 1986, 1:05 p.m.
TRD-8604231

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Texas Department of Health

Sunday, June 1, 1986, 9:30 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet in the conference room, Bureau of Radiation Control, 1212 East Anderson Lane, Austin. Items on the agenda summary include the approval of minutes; the chairman's report; the update on the Texas Low-Level Radioactive Waste Disposal Authority activities; committee reports including the Executive, Administrative Penalties, Industrial Radiography, Medical, Licensing State, Fee, and Radioactive Waste Committees; rules and regulatory guide update; general activity; the Division of Compliance and Inspection; the Division of Environmental Programs; the Division of Licensing, Registration and Standards; and determination of the next meeting date and location. The board also will meet in executive session.

Contact: David Cochran, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7541.

Filed: May 6, 1986, 9:14 a.m.
TRD-8604264

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Texas Health and Human Services Coordinating Council

Wednesday, May 14, 1986, 9 a.m. The Public/Private Policy Group of the Texas Health and Human Services Coordinating Council will meet in the Senate Reception Room, State Capitol, Austin. According to the agenda, the council will consider a report from the council staff; a report from the Program Committee on revised levels of

care; a report from the Cost Committee; a report from the Common Document Committee; a report from the Conference Committee; the relationship of public education to residential contract care report; old business; and new business.

Contact: Patrice Thomas, 311A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: May 5, 1986, 11:42 a.m.
TRD-8604225

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University of Houston System

Wednesday, May 7, 1986, 7:30 a.m. The Board of Regents of the University of Houston System met in Room 510, Enterprise Bank Building, 4600 Gulf Freeway, Houston. According to the agenda, the board discussed an award of contract to refurbish the track at Robertson Stadium in University Park.

Contact: Michael T. Johnson, Suite 500, 4600 Gulf Freeway, Houston, Texas 77023, (713) 749-7545.

Filed: May 2, 1986, 9:25 a.m.
TRD-8604118

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Texas Department of Human Services

Monday, May 12, 1986, 9 a.m. The Advisory Committees Representatives of the Texas Department of Human Services (DHS) will meet in Classroom 1, West Tower, Second Floor, 701 West 51st Street, Austin. According to the agenda summary, the representatives will tour the DHS computer center; consider current state issues; federal issues; the Little Grace Commission; the Sunset review; general agency budget issues; and review program budgets including health care services, indigent health care, services to the aged and disabled, and services to families and children.

Contact: Mary Polk, P.O. Box 2960, Austin, Texas 78769, (512) 450-3037.

Filed: May 2, 1986, 3:09 p.m.
TRD-8604150

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State Board of Insurance

Tuesday, May 6, 1986, 9 a.m. The State Board of Insurance made an emergency revision to the agenda for a meeting held in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. The revision concerned the discussion and decision on the State Board of Insurance Building renovation. The emergency status was necessary to meet construction deadlines.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: May 5, 1986, 9:22 a.m.
TRD-8604229

The Commissioner's Hearing Section of the State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Days, times, rooms, dockets, and agendas follow.

Wednesday, May 14, 1986, 9 a.m. In Room 342, the section will consider Docket 9258—whether disciplinary action should be taken against Michael Paul Grappin, Copperas Cove, who holds a Group I, legal reserve life insurance agent's license by the State Board of Insurance.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: May 5, 1986, 11:02 a.m.
TRD-8604215

Wednesday, May 14, 1986, 1:30 p.m. In Room 353, the section will consider Docket 9254—application of Larry Owen Manning, Victoria, for a solicitor for local recording agent's license.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: May 5, 1986, 11:02 a.m.
TRD-8604214

Wednesday, May 14, 1986, 1:30 p.m. In Room 342, the section will consider Docket 9262—stock purchase of Citizens Insurance Company of America, Austin.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: May 5, 1986, 11:01 a.m.
TRD-8604213

Thursday, May 15, 1986, 9 a.m. In Room 353, the section will consider Docket 9261—whether disciplinary action should be taken against James Emrie Whitaker, Lubbock, who holds a Group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: May 5, 1986, 11:01 a.m.
TRD-8604212

Friday, May 16, 1986, 9 a.m. In Room 342, the section will consider Docket 9263—application of Group Prepaid Legal Services Plan, Inc., San Antonio, for a certificate of authority to engage in the business of prepaid legal services in Texas.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6525.

Filed: May 5, 1986, 11:01 a.m.
TRD-8604211

Monday, May 19, 1986, 1:30 p.m. In Room 342, the section will consider Docket 9259—whether disciplinary action should be taken against Betty June Alread, Fort Worth, who holds a Group II and local recording agent's license issued by the State Board of Insurance.

Contact: O. A. Cassity, III, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: May 5, 1986, 11:01 a.m.
TRD-8604210

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Texas Board of Land Surveying

Thursday and Friday, June 5 and 6, 1986, 8 a.m. daily. The Texas Board of Land Surveying will meet in Suite 304, 7703 North Lamar Boulevard, Austin. According to the agenda, the board will approve the minutes of the previous meetings; conduct interviews; discuss correspondence; conduct a formal hearing on Complaint 86-15 against Mr. Wendell Hancock of Fort Worth; and any other business to come before the board.

Contact: Betty J. Pope, Suite 304, 7703 North Lamar Boulevard, Austin, Texas 78752, (512) 452-9427.

Filed: May 5, 1986, 10:55 a.m.
TRD-8604172

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Texas State Board of Medical Examiners

Thursday-Saturday, May 15-17, 1986, 6 p.m. on Thursday and 8 a.m. Friday and Saturday. The Disciplinary Process Review Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Austin. According to the agenda, the committee will consider cases over one year old; and conduct a random review of cases dropped from the disciplinary process. The committee also will meet in executive session under the authority of Texas Civil Statutes, Article 6252-17, as related to Article 4495b, §§2.07, 3.04(d), 4.05(d), 5.06(e)(1), and Attorney General Opinion H-484 (1974).

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

Filed: May 5, 1986, 3:39 p.m.
TRD-8604248

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Midwestern State University

Committees of the Board of Regents of Midwestern State University (MSU) will meet on Thursday, May 8, 1986 in the Hardin Build-

ing Boardroom, MSU, Wichita Falls. Times, committees, and agendas follow.

3 p.m. The Executive Committee will review and act upon construction accounts including roof repair on the Clark Student Center; roof repair on the D. L. Ligon Coliseum; and the Akin Auditorium of Moffett Library.

Contact: Dr. Louis J. Rodriguez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6611.

Filed: May 1, 1986, 2:08 p.m.
TRD-8604104

3:20 p.m. The Finance Committee will approve salary change in the fiscal year 1985-86 budget; authorize fund transfers; a loan write off; review recommendations allocating funds to various accounts; and review the 1986-87 budget and the 1986 summer budget.

Contact: Dr. Louis J. Rodriguez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6611.

Filed: May 1, 1986, 2:09 p.m.
TRD-8604102

4:30 p.m. The Personnel and Curriculum Committee will review the list of May graduates; recommendations for tenure and promotion; the policy manual revisions; adjunct faculty status for Mr. Dennis Parmley and Dr. Jeffrey Slasser, a leave of absence for Dr. Richard Fleming, the faculty grievance procedures policy; and the emeritus status for retiring faculty members.

Contact: Dr. Louis J. Rodriguez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6611.

Filed: May 1, 1986, 2:10 p.m.
TRD-8604101

5 p.m. The Student Affairs Committee will review the food service contract; room and board rates; and the building use policy for student (internal) group and organizations.

Contact: Dr. Louis J. Rodriguez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6611.

Filed: May 1, 1986, 2:10 p.m.
TRD-8604100

5:15 p.m. The Athletics Committee will review the status report on the M-Club Drive; the status report on NCAA Division II membership; and the NAIA National Soccer Tournament.

Contact: Dr. Louis J. Rodriguez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6611.

Filed: May 1, 1986, 2:10 p.m.
TRD-8604097

5:45 p.m. The University Development Committee will discuss the summary of estimated gifts, grants, and pledges.

Contact: Dr. Louis J. Rodriguez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6611.

Filed: May 1, 1986, 2:11 p.m.
TRD-8604096

Friday, May 9, 1986, 9 a.m. The Board of Regents will approve minutes; review financial reports; recommendations by the Executive Committee, the Financial Committee, the Personnel and Curriculum Committee; and the Student Affairs Committee, and reports by the Athletics Committee, the University Development Committee, and the President. The board also will meet in executive session to discuss personnel and contractual matters.

Contact: Dr. Louis J. Rodriguez, Midwestern State University, 3400 Taft Boulevard, Wichita Falls, Texas 76308, (817) 692-6611.

Filed: May 1, 1986, 2:12 p.m.
TRD-8604095

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Texas Music Commission

Friday, May 2, 1986, 10:30 a.m. The Texas Music Commission made an emergency revision to the agenda for a meeting held in the Lieutenant Governor's Committee Room, State Capitol, Austin. The revision concerned agenda items that were postponed until the afternoon. A staff session was added because commission members required background information prior to the meeting. State agency directors were added to provide other necessary information. The emergency status was necessary because the staff felt that the commission members needed some background information before taking up the agenda.

Contact: Bekki Lammert, P.O. Box 2910, Austin, Texas 78769.

Filed: May 2, 1986, 8:46 a.m.
TRD-8604112

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North Texas State University

Thursday, May 8, 1986, 10 a.m. The Role and Scope Committee of the Board of Regents of the Texas College of Osteopathic Medicine (TCOM) and North Texas State University (NTSU) met in the boardroom, Administration Building, NTSU, Denton. According to the agenda, NTSU considered personnel transactions; the small class report, Spring 1985; the faculty development leaves;

the leave of absence without pay; the promotion and tenure recommendations; the faculty workload report; the University Review Committee Charter; and the establishment of holidays for 1986-1987. The committee also met in executive session. TCOM considered the appointments to the TCOM Advisory Council; the Fort Worth Cultural District appointment; the academic holiday schedule; personnel transactions; and promotion and tenure recommendations.

Contact: Jan Dobbs, P.O. Box 13737, Denton, Texas 76203, (817) 788-2198.

Filed: May 5, 1986, 2:06 p.m.
TRD-8604258

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Pan American University

Thursday, May 15, 1986. Committees of the Board of Regents of the Pan American University will meet in the Board Room, Administration Building, Pan American University, Edinburg. Times, committees, and agendas follow.

10:30 a.m. The Finance Committee will consider tuition revenue bonds.

Contact: Miguel A. Nevarez, 1201 West University Avenue, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: May 5, 1986, 1:57 p.m.
TRD-8604357

10:45 a.m. The Academic Affairs Committee will consider the appointment of the Dean of the School of Education; and appointment of the Dean of Academic Affairs-Pan American University at Brownsville.

Contact: Miguel A. Nevarez, 1201 West University Avenue, Edinburg, Texas 78539, (512) 381-2100.

Filed: May 5, 1986, 1:58 p.m.
TRD-8604256

11 a.m. The Board of Regents will review reports of the Finance Committee, the Academic Affairs Committee, and the Committee of the Whole including the board resolution for Robert W. Shepard, the board resolution for Dr. Rodolfo E. Margo, and the president's informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: May 5, 1986, 1:58 p.m.
TRD-8604236

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Board of Pardons and Paroles

Tuesday, May 6, 1986, 9:30 a.m. The Board of Pardons and Paroles made an emergency addition to the agenda for a meeting held at 8610 Shoal Creek Boulevard, Austin. The

addition concerned a review of deferred parole cases; and a review of inmates over age 40. The emergency status was necessary because board members could not adjust their schedules to meet at any other reasonable time to consider these items.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

Filed: May 2, 1986, 11:23 a.m.
TRD-8604129

Monday-Friday, May 12-15, 1986, 1:30 p.m. daily except 11 a.m. on Friday. A Board Panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda summary, the panel will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction, and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: May 2, 1986, 11:24 a.m.
TRD-8604128

Tuesday, May 13, 1986, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board will consider executive clemency recommendation and relation action (other than Out of Country Conditional Pardons) including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutation of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-3152.

Filed: May 2, 1986, 11:24 a.m.
TRD-8604127

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Texas State Board of Pharmacy

Monday-Wednesday, May 12-14, 1986, 1 p.m. on Monday, 8:30 a.m. on Tuesday and Wednesday. The Texas State Board of Pharmacy will meet at the Embassy Suites, North, 5901 IH 35 North, Austin. Items on the agenda summary include testimony and reviews of evidence of alleged violations of those laws which persons are subject to administrative sanctions and what form the sanctions are to take; approval of board business meeting minutes from February 25, 1986; approval of the fiscal year 1986 budget amendments and procedures; approval of the fiscal year 1987 budget; approval of the fiscal year 1988-89 budget request to the Legislative Budget Board; consideration of rules for final adoption including §§291.1, 291.2, 291.4, 291.5-291.7, and 291.17; consideration of proposed §§281.24, 281.56, and

283.12; discussion of the date for the public hearing regarding proposed §§291.91-291.96; review and board action regarding recommendations of the Ad Hoc Committee on ambulator/surgical centers; consideration of Attorney General Opinion JM-452; and a report on the legislative hearing of TSBME, TSBP, and DPS enforcement activities. The board also will meet in executive session to discuss pending litigation.

Contact: Cathy Stella, Suite 110, 8505 Cross Park Drive, Austin, Texas 78754, (512) 832-0661.

Filed: May 2, 1986, 9:49 a.m.
TRD-8604119

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State Board of Plumbing Examiners

Monday, May 19, 1986, 9:30 a.m. The State Board of Plumbing Examiners will meet at 929 East 41st Street, Austin. Items on the agenda include the minutes of the previous meeting; the Southern Building Code Congress International, Inc.; the International Association of Plumbing and Mechanical Officials; discuss the revocation request from Texas City; discussion of hardship cases; review of examination data; the master and journeyman vocational training report; review of financial report; and discussion of the budget for fiscal years 1988 and 1989.

Contact: Lynn Brown, 929 East 41st Street, Austin, Texas 78765, (512) 458-2145.

Filed: May 6, 1986, 9:12 a.m.
TRD-8604267

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Texas State Board of Public Accountancy

Thursday and Friday, May 15 and 16, 1986, 9 a.m. daily. The Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the board will conduct informal conferences in regards to complaint numbers 85-04-17L, 85-04-26L, 85-01-35L, 85-02-17L, 85-02-26L, 85-05-12L, 85-08-02L, 85-09-17L, 83-08-12L (tentative), 85-06-14L, 84-12-01L, 85-10-05L, and 85-04-04L.

Contact: Bob E. Bradley, Suite 340, 1033 La Posada, Austin, Texas 78752, (512) 451-0241.

Filed: May 5, 1986, 4:23 p.m.
TRD-8604252

Friday and Saturday, May 16 and 17, 1986, noon and 1 p.m. respectively. The Executive Committee and Board of the Texas State Board of Public Accountancy will meet Friday in Suite 340, 1033 La Posada, Austin, and Saturday at the Erwin Center, 15th and Red River Streets, Austin. According to the agenda summary, Friday the committee and

the board will review the fiscal year 1988-1989 appropriation request, budget review, act on proposals for decision and consent agreements, committee appointments, rule consideration (proposed and final adoption action), and other pertinent matters. On Saturday, the board will conduct the swearing-in ceremony for new CPAs.

Contact: Bob E. Bradley, Suite 340, 1033 La Posada, Austin, Texas 78752, (512) 451-0241.

Filed: May 5, 1986, 4:25 p.m.
TRD-8604253

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Public Utility Commission of Texas

Wednesday, May 7, 1986, 9 a.m. The Hearings Division of the Public Utility Commission of Texas met in emergency session in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division considered Dockets 6477, 6525, and 6660—inquiry of the Public Utility Commission of Texas concerning the fixed fuel factor of Gulf States Utilities Company; application of Gulf States Utilities Company for authority to change rates; appeals of Gulf States Utilities Company from the rate proceeding of the City of Orange *et al.* (Possible stipulation of matters discussed at the April 30, 1986, final order meeting); Docket 6397—notice of intent of Texas-New exico Power Company for a coal-fired generating plant in Robertson County. (Motion for rehearing). The emergency status was necessary because of statutory deadlines.

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

Filed: May 1, 1986, 2:33 p.m.
TRD-8604089

Friday, May 9, 1986, 9 a.m. The Administrative Division of the Public Utility Commission of Texas will meet in Suite 450N, Hearing Room D, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the division will consider the approval of minutes of April 25, 1986; reports; discuss and act on the fiscal 1986 budget; the court reporting services; the revisions needed in substantive rules to delete reference to water and reorganization of the staff structure from functional to industry organization; and set the time and place for the next meeting. The division also will meet in executive session to consider personnel and litigation matters.

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

Filed: May 1, 1986, 2:31 p.m.
TRD-8604091

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.

Monday, May 12, 1986, 10 a.m. A second prehearing conference in Docket 6778—application of Cap Rock Electric Cooperative, Inc., for authority to change rates.

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

Filed: May 2, 1986, 2:50 p.m.
TRD-8604142

Tuesday, May 13, 1986, 10 a.m. A prehearing conference in Docket 6848—application of Coleman County Telephone Cooperative for authority to unbundle service connection charges and to make other minor rate changes.

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

Filed: May 2, 1986, 2:49 p.m.
TRD-8604143

Thursday, May 15, 1986, 10 a.m. A prehearing conference in Docket 6839—application of Texas Utilities Electric Company for a certificate of convenience and necessity within Denton County.

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

Filed: May 1, 1986, 2:34 p.m.
TRD-8604088

Monday, July 14, 1986, 10 a.m. A hearing on the merits in Docket 6797—application of Sam Rayburn G&T, Inc., for authority to change rates.

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

Filed: May 5, 1986, 3:15 p.m.
TRD-8604246

Thursday, August 21, 1986, 10 a.m. A hearing on the merits in Docket 6488—petition of Cogen Power, Inc., for determination concerning applicability of certificate of convenience and necessity provisions to certain sales of power by a qualifying facility; Docket 6841—application of Cogen Power, Inc., for a certificate of convenience and necessity to sell electric power from one portion of a qualifying cogeneration facility to the owner of the other portion of the qualifying facility.

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

Filed: May 1, 1986, 2:32 p.m.
TRD-8604090

Monday, September 8, 1986, 9 a.m. A hearing on the merits in Docket 6032—petition

of Central Power and Light Company for an amendment to monthly interim fuel factor.

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

Filed: May 5, 1986, 3:15 p.m.
TRD-8604245

Thursday, October 2, 1986, 10 a.m. A prehearing conference in Docket 6184—inquiry of the Public Utility Commission of Texas concerning the economic viability of unit two of the South Texas Electric Generating Station.

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

Filed: May 1, 1986, 2:30 p.m.
TRD-8604093

Monday, October 20, 1986, 9 a.m. A hearing on the merits in Docket 6184—inquiry of the Public Utility Commission of Texas concerning the economic viability of unit two of the South Texas Electric Generating Station.

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

Filed: May 1, 1986, 2:31 p.m.
TRD-8604092

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Railroad Commission of Texas

Monday, May 5, 1986. The Oil and Gas Division of the Railroad Commission of Texas made emergency revisions to the agenda for meetings held in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Avenue, Austin. Times and agendas follow.

9 a.m. Consideration of the application of Lone Star Energy Storage, Inc., to use its Texaco I-5-LS and I-6-LS wells for disposal of brine in the Dayton, North Field, Liberty County; motion for rehearing in Docket 3-86,556. The emergency status was necessary because this item was properly noticed at the meeting of April 28, 1986, and was passed.

Contact: Greg Waner, P.O. Drawer 12967, Austin, Texas 78701, (512) 463-6925.

Filed: May 2, 1986, 12:13 p.m.
TRD-8604164

9 a.m. Consideration of Docket 5-81,445—application of Prairie Producing Company, for temporary field rules, Ginger, S. E. (Smackover) Field, Rains County. The emergency status was necessary because this item was properly noticed at the meeting of April 28, 1986, and was passed.

Contact: Greg Waner, P.O. Drawer 12967, Austin, Texas 78701, (512) 463-6925.

Filed: May 2, 1986, 12:13 p.m.
TRD-8604162

9 a.m. Consideration of Docket 5-85,062—application of Ricks Exploration Company to determine proper field designation for its Three J. Ranch Lease, Well 272A, (proposed) Ginger S. W. (Smackover) Field, Rains County. The emergency status was necessary because this item was properly noticed at the meeting of April 28, 1986, and was passed.

Contact: Greg Waner, P.O. Drawer 12967, Austin, Texas 78701, (512) 463-6925.

Filed: May 2, 1986, 12:12 p.m.
TRD-8604161

9 a.m. Consideration of Docket 6E-85,397—whether to enter a commission order assessing administrative penalties and/or requiring compliance with commission regulations on the J. Moore Tank Service, Fonville Pit, East Texas Field, Gregg County, motion for rehearing. The emergency status was necessary because this item was properly noticed at the meeting of April 28, 1986, and was passed.

Contact: Kim Kiplin, P.O. Drawer 12967, Austin, Texas 78701, (512) 463-6921.

Filed: May 2, 1986, 12:12 p.m.
TRD-8604157

11 a.m. Consideration of whether to use state funds to plug Paramount Oil Company, Michalewitz Lease, Well No. 1, Lot Field, Falls County. The emergency status was necessary because the well is leaking saltwater into Cottonwood Creek and could be a threat to the public's health, safety, and welfare.

Contact: Willis Steed, P.O. Drawer 12967, Austin, Texas 78701, (512) 463-6830.

Filed: May 5, 1986, 8:59 a.m.
TRD-8604181

Monday, May 12, 1986, 9 a.m. The Railroad Commission of Texas will meet in the first floor auditorium east, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission will consider and act on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7257.

Filed: May 2, 1986, 12:03 p.m.
TRD-8604145

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: May 2, 1986, 12:10 p.m.
TRD-8604155

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-6787.

Filed: May 2, 1986, 12:06 p.m.
TRD-8604151

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: May 2, 1986, 12:05 p.m.
TRD-8604148

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: May 2, 1986, 12:10 p.m.
TRD-8604153

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters. The commission also will consider the signing of final orders in LP-Gas Dockets 489—77 Welding Supply, Inc., 490—Holiday Trav-L-Park, 491—Ray's Mobile Home Service, Inc., 492—Harold's Trailer Repairs, 493—Tawakoni Stop N'Shop Grocery, 494—R. C. Lee Enterprises, Inc., doing business as Lee Mobile Homes, and 495—Oasis Mobile Home Park.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: May 2, 1986, 11:58 a.m.
TRD-8604132

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: May 2, 1986, 12:04 p.m.
TRD-8604149

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1987, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: May 2, 1986, 12:02 p.m.
TRD-8604134

Consideration of whether to initiate rulemaking proceedings for pipelines, including Statewide Rule 70 (16 TAC §3.65), Docket 20-86,874.

Contact: Lisa Anderson, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6887.

Filed: May 2, 1986, 12:04 p.m.
TRD-8604147

Consideration of All American Pipeline Company for a pipeline permit across various counties in Texas.

Contact: Susan Cory, P.O. Box 12967, Austin, Texas 78711, (512) 463-6922.

Filed: May 2, 1986, 12:11 p.m.
TRD-8604156

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: May 2, 1986, 12:03 p.m.
TRD-8604144

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: May 2, 1986, 12:10 p.m.
TRD-8604154

The Office of the Special Counsel director's report relating to pending litigation, including but not limited to litigation in the All American Pipeline Case, Cause Nos. MO-86-CA-026 and 389,752 and litigation in Texas Association of Business v. Texas Air Control Board and Bill Steward, Cause No. 393,120; state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lilie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

Filed: May 2, 1986, 10:16 a.m.
TRD-8604152

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters; and the awarding of a contract for backfilling and enclosing mine shafts at the Terlingua abandoned mine land project in Brewster County.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: May 2, 1986, 12:03 p.m.
TRD-8604146

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: May 2, 1986, 11:59 a.m.
TRD-8604133

Addition to the previous agenda:

Docket 027557ZZT—application of Texas Motor Express Association who seeks to amend RCT Tariff 31-K (express shipments

of general commodities) by establishing rates in Item 450 Series to apply on shipments weighing between 201 and 500 lbs. on a temporary basis; and consideration of interim order.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: May 2, 1986, 1:50 p.m.
TRD-8604131

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Texas Rehabilitation Commission

Friday, May 9, 1986, 3 p.m. The Subcommittee on Program Accountability of the Governor's Committee for Disabled Persons of the Texas Rehabilitation Commission (TRC) will meet at 158 East Riverside Drive, Austin. According to the agenda, the subcommittee will discuss subcommittee objectives; develop a priority of activities; develop an action plan for the top priority activities; and discuss the subcommittee member's assignments. A speaker telephone will be available.

Contact: Virginia Roberts, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8272.

Filed: May 1, 1986, 4:53 p.m.
TRD-8604109

Thursday and Friday, May 15 and 16, 1986, 8:30 a.m. and 9:30 a.m. respectively. The Board of the Texas Rehabilitation Commission will meet in Room 101-B, 158 East Riverside Drive, Austin. Items on the agenda include introduction of guests; invocation; communications; approval of minutes from, the board meeting of February 27-28, 1986; and a board working session about the Disability Determination Division. On May 16, 1986 the board will introduce guest; continue the board working session; discuss the commission budget reduction under the Governor's Executive Order MW-36; the Texas Planning Council for Developmental Disabilities Conflict of Interest Policy; the Policy for Physical Restoration for Nonseverely Disabled Clients; the new order of selection criteria; and TRC public forums. The board also will meet in executive session.

Contact: Vernon H. Newman, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8126.

Filed: May 2, 1986, 12:55 p.m.
TRD-8604163

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Texas Savings and Loan Department

The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. Days, times and agendas follow.

Monday, May 12, 1986, 9 a.m. According to the agenda summary, the department will determine whether to grant or deny the application of Kleburg County Savings Association, Kingsville, Kleburg County, to change the name to Vision Bank Savings Association.

Contact: Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: May 2, 1986, 11:25 a.m.
TRD-8604126

Thursday, May 15, 1986, 9 a.m. According to the agenda, the department will determine whether to grant or deny the application of Coastal Bend Savings and Loan Association, Port Lavaca, Calhoun County, to change the name to OneBanc Savings Association.

Contact: Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: May 2, 1986, 11:25 a.m.
TRD-8604125

Friday, May 16, 1986, 9 a.m. According to the agenda summary, the department will determine whether to grant or deny the application of Coastal Bend Savings and Loan Association, Port Lavaca, Calhoun County, to relocate the home office from 1329 North Virginia, Port Lavaca, Calhoun County, to 8 Greenway Plaza, Houston, Harris County.

Contact: Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: May 5, 1986, 10:47 a.m.
TRD-8604207

Friday, May 16, 1986, 9:30 a.m. According to the agenda summary, the department will determine whether to grant or deny the application of Coastal Bend Savings and Loan Association, Port Lavaca, Calhoun County, for a branch office at 6200 Bellaire, Houston, Harris County.

Contact: Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: May 5, 1986, 10:45 a.m.
TRD-8604205

Friday, May 16, 1986, 10 a.m. According to the agenda summary, the department will determine whether to grant or deny the application of Coastal Bend Savings and Loan Association, Port Lavaca, Calhoun County, for a branch office at 1329 North Virginia, Port Lavaca, Calhoun County.

Contact: Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: May 5, 1986, 10:44 a.m.
TRD-8604204

Friday, May 16, 1986, 10:30 a.m. According to the agenda summary, the department will determine whether to grant or deny the application of Coastal Bend Savings and Loan Association, Port Lavaca, Calhoun County, for a branch office at 2323 Wirt Road, Houston, Harris County.

Contact: Russell R. Oliver, Suite 201, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1250.

Filed: May 5, 1986, 10:46 a.m.
TRD-8604206

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School Land Board

Tuesday, May 6, 1986, 10 a.m. The School Land Board made an emergency addition to the agenda for a meeting held in Room 831, 1700 North Congress Avenue, Austin. The addition concerned consideration of nominations, terms, conditions, and procedures for the special oil and gas lease sale. The emergency status was necessary in order to meet the deadline for legal requirements for advertising.

Contact: Linda K. Fisher, Room 836, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5016.

Filed: May 1, 1986, 2:09 p.m.
TRD-8604103

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Commission on Standards for the Teaching Profession

Committees of the Commission on Standards for the Teaching Profession will meet in Room 1-109, William B. Travis Building, 1701 North Congress Avenue, Austin. Days, times, committees, and agendas follow.

Thursday, May 15, 1986, 1 p.m. The Interim Reports Committee will consider an interim report from Texas Wesleyan College.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: May 2, 1986, 2:17 p.m.
TRD-8604169

Thursday, May 15, 1986, 1:30 p.m. The Committee on Certification Programs and Requirements will discuss the status report on development of certification tests; the report on the survey of institution with regard to the certificate program in computer information systems; a recommendation of policy regarding general education requirements for persons with bachelor's

degrees seeking certification as a classroom teacher; individual programs (1984 standards) including Prairie View A&M University, the University of Texas at Arlington, and Southern Methodist University; and individual programs (1955 standards) including Hardin-Simmons University.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: May 2, 1986, 2:16 p.m.
TRD-8604167

Thursday, May 15, 1986, 3 p.m. The Committee on Standards and Procedures for Institutional Approval will discuss oral language proficiency testing of prospective foreign language teacher; and consider the report of the visiting evaluation team to Schreiner College.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: May 2, 1986, 2:16 p.m.
TRD-8604168

Thursday, May 15, 1986, 4:30 p.m. The Teacher Education Conference Planning Committee will discuss the progress report on the search for the site of the 1988 conference in Dallas; the theme for the 1986 conference; and possible program topics and presenters for the 1986 conference.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: May 2, 1986, 2:18 p.m.
TRD-8604171

Friday, May 16, 1986, 8:15 a.m. The commission chairman will review agenda items with the committee chairpersons.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: May 2, 1986, 2:18 p.m.
TRD-8604170

Friday, May 16, 1986, 9 a.m. The Commission on Standards for the Teaching Profession will meet in Room 1-104, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will introduce new commission members; appoint committees and committee chairs; review the report on meeting of the Select Committee on Higher Education; the report on the State Board of Education actions; and reports from the following committees: Interim Reports; Certification; Standards and Procedures; and Teacher Education Conference Planning.

Contact: Dr. Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: May 2, 1986, 2:15 p.m.
TRD-8604165

The Texas A&M University System

Friday, May 9, 1986, 9:30 a.m. The Board of Regents of the Texas A&M University System will meet at the MSC Annex, Texas A&M University, College Station. According to the agenda, the board will review current activities within the Texas A&M University System; consult with former regents of the Texas A&M University System; and adopt any appropriate resolutions.

Contact: Vickie Burt, the Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: May 5, 1986, 2:48 p.m.
TRD-8604233

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University of Texas System

Monday, May 12, 1986, 9:15 a.m. The Board of Regents of the University of Texas System will meet in the Regents' Meeting Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. Items on the agenda include the issuance and sale of U.T. System General Tuition Revenue Refunding Bonds, Series 1986, and U.T. Austin Building Revenue Refunding Bonds, Series 1986; the advance refunding of the non-permanent university fund bond indebtedness of U.T. System General Tuition Revenue Refunding Bonds, Series 1986, and U.T. Austin Building Revenue Refunding Bonds, Series 1986; waiver of the regents' rules and regulations to name the School of Public Health Building; the resolutions of commendation to the 1986 Lady Longhorn Basketball Team and 1986 Lady Longhorn Swimming and Diving Teams.

Contact: Arthur H. Dilly, P.O. Box N, Austin, Texas 78713-7328, (512) 499-4402.

Filed: May 5, 1986, 3:12 p.m.
TRD-8604244

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Texas Tourist Development Agency

Friday, May 16, 1986, 9 a.m. The Texas Tourist Development Agency (TTDA) will meet at Lakeway, Austin. Items on the agenda include approval of minutes of the January 23, 1986, meeting; a briefing on the Texas Economic Development Commission; a briefing on the proposed Mexico meeting; a request for funds for the Dallas PowWow; TTDA budget cuts; current budget status; request to fund the World Travel Market; a proposed interagency contract with the Texas Music Commission; a report on the 1986 Tour Conference meeting; the 1985 Hotel/Motel tax survey; the 1987-1988 budget request; legislative proposals; a proposal to move the TTDA office; the status of the MotorCoach tour program; personnel requests for continuing exempt positions for

fiscal year 1987; the director's report; a marketing strategy for 1987 and beyond; new business; and comments from the public. The agency also will meet in executive session if necessary.

Contact: Margaret Younger, P.O. Box 12008, Austin, Texas 78711, (512) 463-7400.

Filed: May 5, 1986, 9:20 a.m.
TRD-8604230

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Board for Lease of University Lands

Monday, May 12, 1986, 11 a.m. The Board for Lease of University Lands will meet in the Regent's Conference Room, 201 West Seventh Street, Austin. According to the agenda, the board will approve minutes of the October 23, 1985, meeting; and consider selected tracts for special lease sale.

Contact: Maxine R. Dean, 210 West Sixth Street, Austin, Texas 78701, (512) 499-4290.

Filed: May 1, 1986, 2:59 p.m.
TRD-8604094

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Texas Water Commission

Tuesday, May 13, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the water district bond issues; the release from escrow; use of surplus funds; proposed water quality permits; amendments and renewals; water use applications; a weather modification matter; rate matters; and permanent rules on the consolidated permit.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: May 1, 1986, 4:18 p.m.
TRD-8604018

The Office of Hearings Examiners of the Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, rooms, and agendas follow.

Wednesday, May 14, 1986, 10 a.m. In Room 119, the office will consider Docket 6250—application for transfer of a water certificate of convenience and necessity by Community Water and Sewer Corporation.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: May 5, 1986, 4:33 p.m.
TRD-8604260

Wednesday, May 14, 1986, 10 a.m. In Room 119, the office will consider Docket 6250—application for transfer of a water certificate of convenience and necessity by Community Water and Sewer Corporation.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: May 5, 1986, 4:31 p.m.
TRD-8604260

Wednesday, May 21, 1986, 9 a.m. In Room 512, the office will consider Dockets 6160, 6536, 6537, and 6658—amendments to certificates of convenience and necessity for Windemere Utility Company and Manville Water Supply Corporation.

Contact: Joseph O'Neal, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: May 5, 1986, 4:33 p.m.
TRD-8604262

Wednesday and Thursday, June 4 and 5, 1986, 9 a.m. daily. The Office of Hearings Examiners of the Texas Water Commission will meet in the Community Room, Security Savings and Loan, 2201 Pine Drive, County Road 517, Dickinson. According to the agenda, the office will consider the application of Galveston County Municipal Utility District No. 14 and the City of League City, in care of Schwartz and Hickey, 2000 West Loop South, Suite 1600, Houston, Texas 77027 for a Proposed Permit 13255-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 1,000,000 gallons per day from the proposed Bay Colony Wastewater Treatment Plant. The applicants propose to build the treatment facilities in phases to service a proposed subdivision which will consist of approximately 900 acres.

Contact: J. Kay Trostle, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: May 5, 1986, 2:24 p.m.
TRD-8604254

Wednesday, June 11, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider a notice of hearing on a petition for the creation of Harris County Municipal Utility District 316, containing 178.44 acres of land.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: May 2, 1986, 4:26 p.m.
TRD-8604179

Thursday, June 12, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the Municipal Auditorium, City Hall, 1829 Sam Houston, Liberty. According to the agenda summary, the office will consider the application of Lebanon Properties, Inc., P.O. Box 1274, Cleveland, Texas 77327 for a Proposed Permit 13158-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day from the proposed Cypress Lake No. 1 Wastewater Treatment Plant which is to serve a proposed residen-

tial development. This is to correct plant location on the previous notice.

Contact: Carl Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: May 5, 1986, 4:34 p.m.
TRD-8604261

Tuesday, July 1, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the Biology and Earth Science Auditorium, Texas A&I University, Kingsville. According to the agenda summary, the office will consider the application of Uranium Resources, Inc./Western Nuclear, Inc., 835 Promenade Bank Tower, Richardson, Texas 75080 for a Class III in situ uranium mining Proposed Permit UR02827 at the Kingsville Dome Mining Project. Uranium Resources, Inc./Western Nuclear, Inc., have also applied for two Proposed Permits WDW-247 and WDW-248 to authorize the operation of two waste disposal wells and associated surface facilities at the Kingsville Dome Mining Project.

Contact: Claire Patterson, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: May 5, 1986, 2:25 p.m.
TRD-8604255

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Regional Agencies Meetings Filed May 1

The Brazos River Authority, Water Utilization Committee, will meet at 4400 Cobbs Drive, Waco, on May 12, 1986, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Central Texas Council of Governments, Area Agency on Aging, will meet at 302 East Central Avenue, Belton, on May 21, 1986, at 2:00 p.m. Information may be obtained from Margareta A. Williams, P.O. Box 729, Belton, Texas 76513, (817) 939-1886.

The Gillespie County Appraisal District, Board of Directors, will meet at City Hall assembly room, Fredericksburg, on May 13, 1986, at 9:00 a.m. Information may be obtained from Patrick M. Dooley, Secretary, P.O. Box 429, Fredericksburg, Texas 78624.

The Gulf Bend Mental Health/Mental Retardation Center, Board of Trustees, met at 1404 Village Drive, Victoria, on May 2, 1986, at noon. Information may be obtained from Gulf Bend MHMR Center, 1404 Village Drive, Victoria, Texas 77901.

The Hamilton County Appraisal District, met at the Hamilton County Appraisal District Office, Hamilton County Courthouse, Hamilton, on May 5, 1986, at 7:00 p.m. In-

formation may be obtained from Doyle Roberts, P.O. Box 446; Hamilton, Texas 76531, (817) 386-8945.

The Lee County Appraisal District, Appraisal Review Board, met at 218 East Richmond Street, Giddings, on May 8, 1986, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618.

The Nueces River Authority, Board of Directors, met at Sheraton-Marina Hotel, 300 North Shoreline Boulevard, Corpus Christi, on May 8, 1986, at 11:00 a.m. Information may be obtained from Con Mims, Executive Director, P.O. Box 348, Uvalde, Texas 78802, (512) 278-6810.

The Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, on May 6, 1986, at 8:00 p.m. Information may be obtained from L. R. Peveler, Chief Appraiser, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

The West Texas Council of Governments, Board of Directors, met at Two Civic Center Plaza, eighth floor conference room, El Paso, on May 2, 1986, at 9:30 a.m. Information may be obtained from Anna M. Maldonado, Two Civic Center Plaza, El Paso, Texas 79999, (915) 541-4681.

The Wheller County Appraisal District, Board of Directors, met at the district office, County Courthouse Square, on May 5, 1986, at 2:00 p.m. Information may be obtained from Marilyn Copeland, Chief Appraiser, P.O. Box 349, Wheeler, Texas 79096, (806) 826-5900.

The Wise County Appraisal District, Board of Directors, met at 206 South State Street, Decatur, on May 8, 1986, at 9:00 a.m. Information may be obtained from Brenda Jones, Bookkeeping Supervisor, P.O. Box, Decatur, Texas 76234, (817) 627-3084.
TRD-8604082

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Meetings Filed May 2

The Capital Area Rural Transportation System, Board of Directors, will meet at CARTS Central Office, 5021 East First Street, Austin, on May 15, 1986, at 10:00 a.m. Information may be obtained from Edna Burroughs, 5021 East First Street, Austin, Texas 78702, (512) 478-7433.

The Dallas Area Rapid Transit, Finance Committee, met at 601 Pacific Avenue, Dallas, on May 5, 1986, at 4:00 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Central Appraisal District, Board of Directors, met at 1420 West Mockingbird Lane, Suite 500, Dallas, on May 1, 1986, at 7:30 a.m. The Appraisal Review Board, also met at the same location, on May 9, 1986, at 10:00 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Dallas, Texas 75247, (214) 631-0520.

The Hunt County Tax Appraisal District, Board of Directors, met in that Hunt County Tax Appraisal District boardroom, 4815-B King Street, Greenville, on May 8, 1986, at 7:00 p.m. Information may be obtained from Joe Pat Davis or Jeanette Jordan, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Red River Authority of Texas, Board of Directors, met at the Activity Center, Room 215, 1001 Indiana, Wichita Falls, on May 8, 1986, at 10:00 a.m. Information may be obtained from Ronald J. Glenn, General Manager, 520 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

The Central Tax Authority of Taylor County, Appraisal Review Board, will meet at 340 Hickory Street, Abilene, on May 15, 1986, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.
TRD-8604117

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Meetings Filed May 5

The Archer County Appraisal District, Board of Directors, will meet at 211 South Center Street, Archer City, on May 14, 1986, at 5:00 p.m. Information may be obtained from Jean James, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Tax Appraisal District of Bell County, Board of Directors, will meet in the Commissioners' Courtroom, Bell County Courthouse, Belton, on May 21, 1986, at 7:00 p.m. Information may be obtained from Tolly Moore, Chief Appraiser, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-3521.

The Brazos Higher Education Authority, Inc., Board of Directors, will meet at City Club of Waco, MBank Building, Waco, on May 9, 1986, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Brazos Higher Education Service Corporation, Board of Directors, will meet at City Club of Waco, MBank Building, Waco, on May 9, 1986, at 12:30 p.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Brazos Student Finance Corporation, Board of Directors, will meet at City Club of Waco, MBank Building, Waco, on May 9, 1986, at noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0913.

The Capital Area Planning Council, Governor's Regional Review Committee, met at 2520 IH 35 South, Suite 100, Austin, on May 8, 1986, at 1:30 p.m. Information may be obtained from Bruce Perryman, 2520 IH 35 South, Suite 100, Austin, Texas 78704, (512) 443-7653.

The Central Appraisal District of Erath County, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on May 14, 1986, at 10:00 a.m. Information may be obtained from Trecia Perales, Secretary Pro-Tem, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

The Comal Appraisal District, Board of Directors, will meet at 644 North Loop 337, New Braunfels, on May 13, 1986, at 7:30 p.m. Information may be obtained from Glenn L. Brucks, Chief Appraiser; P.O. Box 1222, New Braunfels, Texas 78131.

The Ellis County Tax Appraisal District, met at 406 Sycamore Street, Waxahachie, on May 8, 1986, at 7:00 p.m. Information may be obtained from Gray Chamberlain, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Grand Parkway Association, met at 5757 Woodway, 140 East Wing, Houston, on May 8, 1986, at 9:00 a.m. Information may be obtained from Larry Nettles, 3300 First City Tower, 1001 Fannin, Houston, Texas 77002, (713) 654-4586.

The Gray County Appraisal District, Board of Directors, met in Suite 196-A, Hughes Building, 400 West Kingsmill, Pampa, on

May 8, 1986, at 5:00 p.m. Information may be obtained from Charles Buzzard, P.O. Box 836, Pampa, Texas 79065, (806) 665-5123.

The Gregg Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on May 13, 1986, at 10:30 a.m. Information may be obtained from William T. Carroll, CTA, Chief Appraiser, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Heart of Texas Council of Governments, Executive Committee, will meet at HOTCOG Conference Room, 320 Franklin Avenue, Waco, on May 22, 1986, at 10:00 a.m. Information may be obtained from Mary McDown, 320 Franklin, Waco, Texas 76701, (817) 756-6631.

The Jones County Appraisal District, Board of Directors, will meet at District's Office, 1137 East Court Plaza, Anson, on May 15, 1986, at 8:00 a.m. Information may be obtained from John Steele.

The Middle Rio Grande Development Council, Area Advisory Council on Aging, will meet at Uvalde Civic Center, Reading Room, Uvalde, on May 14, 1986, at 10:00 a.m. Information may be obtained from Estrella Hernandez, Director, Area Agency on Aging, Middle Rio Grande Development Council, P.O. Box 1199, Carrizo Spring, Texas 78834, (512) 876-3533.

The Nolan County Central Appraisal District, Appraisal Review Board, will meet at Nolan County Appraisal District, Suite 317A, Sweetwater, on May 13, 1986, at 1:30 p.m. and June 23 and 24, 1986, at 9:00 a.m. Information may be obtained from Patricia Davis, Chief Appraiser, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Nortex Regional Planning Commission, Executive Committee, will meet in the

Bounty Room, Trade Winds Motor Hotel, 1212 Broad Street, Wichita Falls, on May 15, 1986, at noon. Information may be obtained from Edwin B. Daniel, Executive Director, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

The Panhandle Ground Water Conservation District No. 3, Board of Directors, met at 300 South Omohundro, White Deer, on May 5, 1986, at 8:00 p.m. Information may be obtained from Richard S. Bowers, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

The Permian Basin Regional Planning Commission, Board of Directors, will meet at PBRPC Offices, Midland Air Terminal, Midland, on May 14, 1986, at 1:30 p.m. Information may be obtained from Pam K. Weatherby, P.O. Box 6391, Midland, Texas 79701, (915) 563-1061.

The Rusk County Appraisal District, Board of Directors, met at the Administrative Offices, 107 North Van Buren, Henderson, on May 8, 1986, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, Chief Appraiser, P.O. Box 7, Henderson, Texas 75653, (214) 657-9697.

The San Patricio County Appraisal District, Board of Directors, will meet at the Courthouse Annex, Sinton, on May 14, 1986, at 9:30 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402.

**The Upshur County Appraisal District, Board of Directors, will meet at Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, on May 12, 1986, at 7:30 p.m. The Appraisal Review Board will also meet at the same location, on May 14, 1986, at 9:00 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644.
TRD-8604223**

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 Air Control Board Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of §3.09 of the Texas Clean Air Act (TCAA), Texas Civil Statutes, Article 4477-5, the Administrative Procedures and Texas Register Act, §5, Texas Civil Statutes, Article 6252-13a, and Rule 103.11(4) of the Procedural Rules of the Texas Air Control Board (TACB), the TACB will conduct a public hearing to receive testimony concerning revisions to its rules.

Specifically, the TACB is proposing to add a new §116.12, to Regulation VI, Control of Air Pollution by Permits for New Construction or Modification, to provide for the review and continuance of operating permits. The TCAA, as amended in 1985, mandates the review of each TACB operating permit every 15 years. Section 3.28(g) of the TCAA requires the TACB to establish, by rule, a deadline by which the holder of an operating permit shall submit an application for review, the general requirements to be met by the applicant, and the procedures for reviewing and acting on applications. Also, §3.28(g) contains guidelines and other requirements for notification of review, for the administrative process of permit review, continuance, and denial for expiration of an operating permit. These guidelines and requirements, where applicable, are contained in the various subsections of the proposed new section.

The hearing will be held at 10 a.m. on May 28, 1986 in the auditorium of the TACB located at 6330 Highway 290 East, Austin. Public comments, both oral and written, on the proposed new section are invited at the public hearing. The hearing is structured for the receipt of narrative comments. Interrogation or cross-examination is not permitted, although a TACB staff member will be available immediately before and after to answer questions informally. Written comments not presented at the hearing may be submitted to the TACB Central Office in Austin up to and including May 28, 1986. Comments received by 4 p.m. on that date will be considered by the board prior to any final action on the proposed new section. Five copies of all written comments are requested.

Copies of the proposal are available for inspection at the central office of the TACB located at 6330 Highway 290 East, Austin, Texas 78723, and at the regional offices of the agency. For further information, call Barry Irwin at (512) 451-5711.

Issued in Austin, Texas, on May 1, 1986.

TRD-8804175 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: May 2, 1986
For further information, please call (512) 451-5711.

Request for Proposals

The Texas Air Control Board (TACB) invites all interested parties to submit technical proposals to provide consultant services to the agency. The last day for receipt of proposals is May 23, 1986. The contract will become effective after being signed by the executive director of the TACB and the selected contractor. It will terminate on September 30, 1986, unless otherwise extended. Funds expended under this contract for these services will not exceed \$25,000.

Description of Services. The purpose of these contract services is to initiate a program to modify and offer in Dallas, Tarrant, and El Paso Counties the New Technology Automotive Technical Training Program (NTATTP) which was previously developed for use in Harris County. This effort will also entail the recruitment, training, and evaluation for certification of individuals as instructors for the program. A copy of a detailed statement of work to be performed is available from the TACB.

Procedure for Selecting Consultant. The TACB will select and award such contract and engage such services on the basis of demonstrated competence, knowledge, and qualifications for the type of services to be performed and at fair and reasonable prices. The National Center for Vehicle Emission Control & Safety, Colorado State University (CSU), was the contractor for the development of the NTATTP curriculum. Extension of the NTATTP to other counties may be considered a continuation of contract services previously provided by CSU. Accordingly, because of the professional quality of the previous work and since experience with implementing the program will expedite this proposed extension of the program, notice is hereby given that the TACB intends to award this contract to CSU unless a better offer is submitted. This contract is to be funded by a grant from the United State Environmental Protection Agency and must be completed by September 30, 1986, unless otherwise extended. This request for proposals is made under the authority of Texas Civil Statutes, Article 6252-11c.

Contact Person. Any consultant interested in providing the described services should contact Sabino Gomez, Director, Compliance Division, TACB, 6330 Highway 290 East, Austin, Texas 78723. Telephone (512) 451-5711 for a copy of the statement of work.

Issued in Austin, Texas, on April 30, 1986.

TRD-8804077 Allen Eli Bell
Executive Director
Texas Air Control Board

Filed: May 1, 1986
For further information, please call (512) 451-5711.

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State Banking Board Notice of Hearing Cancellation

The date of the hearing for the charter application of Bank of the Southeast, San Antonio, previously scheduled for May 1, 1986, has been cancelled. The hearing has not been rescheduled as of this date.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas, on April 29, 1986.

TRD-8604080 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: May 1, 1986
For further information, please call (512) 479-1200.

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Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On May 1, 1986, the banking commissioner received an application to acquire control of Citizens State Bank, Royse City, by Danny L. Allen, Balch Springs; Bill Bennett, Mesquite; Art Criscuolo, Wylie; Bobby Corwell, Royse City; Lewis Compton, Mesquite; Larry K. Davis, Dallas; Cam F. Dowell, Dallas; James Dudney, Rockwall; Martin Edwards, Rockwall; Kathryn F. Irwin, Forney; Paul Jones, Jr., Mesquite; Ed Mayr, Terrell; Don McGroan, Garland; P.E. Minihan, Wylie; Larry Poort, Rowlett; John Pullen, Royse City; Garry Roddy, Wylie; Marvin L. Smith, Mesquite; James O. Tipton, Mesquite; Donald Whitt, Wylie.

Additional information may be obtained from William F. Aldridge; 2601 North Lamar; Austin, Texas 78705; (512) 475-4451.

Issued in Austin, Texas, on May 1, 1986.

TRD-8604113 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: May 2, 1986
For further information, please call (512) 479-1200.

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Texas Department of Community Affairs Amendment to Contract Award

The Texas Department of Community Affairs (TDCA) proposes to amend its existing contract with the firm of Garza/Gonzalez and Associates for the performance of auditing services. The period of performance of the contract, as amended, is October 15, 1984, through August 31, 1986. The Request for Proposal (RFP) for such ser-

vices was published in the July 31, 1984, issue of the *Texas Register* (9 TexReg 4201).

Description of Services. Under the terms of the proposed contract amendment, the firm of Garza/Gonzalez and Associates would provide additional audit and technical support services to the TDCA, including but not limited to audits of TDCA contractors and assistance in the review and resolution of subrecipient audits.

Business Address. The business address of Garza/Gonzalez and Associates is 212 Stumberg, Suite 208, San Antonio, Texas 78204.

Amendment Amount. The total cost of services to be performed under the proposed amendment is presently estimated to be \$12,000.

Project Reports. Reports to be generated under the proposed amendment shall be submitted to the TDCA upon completion throughout the period of performance of the contract.

Issued in Austin, Texas, on April 30, 1986.

TRD-8604084 Douglas C. Brown
General Counsel
Texas Department of Community
Affairs

Filed: May 1, 1986
For further information, please call (512) 834-8080.

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Office of Consumer Credit Commissioner Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricul- tural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 05/05/86-05/11/86	18.00%	18.00%
Monthly Rate— Article 1.04(c)(1) 05/01/86-05/31/86	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 04/01/86-06/30/86	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11 ⁽³⁾ 04/01/86-06/30/86	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d) ⁽³⁾ 04/01/86-06/30/86	14.17%	N/A
Standard Annual Rate—Article 1.04(a)(2) ⁽²⁾ 04/01/86-06/30/86	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11 ⁽³⁾ 04/01/86-06/30/86	18.00%	N/A

Annual Rate Applicable
to Pre-July 1, 1983,
Retail Credit Card and
Lender Credit Card
Balances with Annual
Implementation Dates
from

04/01/86-06/30/86 18.00% N/A

Judgment Rate—Article
1.05, §2

05/01/86-05/31/86 10.00% 10.00%

- (1) For variable rate commercial transactions only.
- (2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
- (3) Credit for personal, family, or household use.
- (4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on April 28, 1986.

TRD-8604078 Al Endsley
Consumer Credit
Commissioner

Filed: May 1, 1986
For further information, please call (512) 479-1280.

Coordinating Board, Texas College and University System Notice of Consultant Contract

The Coordinating Board, Texas College and University System, has entered into a private consultant contract with Arthur Andersen & Company, 816 Congress Avenue, Suite 1500, Austin, Texas 78701, to design and test a model for a comprehensive Texas labor supply data base which is a component of the Texas State Labor Market Information System.

This award is filed under the provisions of Texas Civil Statutes, Article 6252-11c. The consultant proposal request was published in the February 14, 1986, issue of the *Texas Register* (11 TexReg 872).

The term of the contract is from May 1, 1986-April 30, 1987, for an amount not to exceed \$125,000.

Project deliverables shall include periodic reports, with 20 copies of the final report to be delivered no later than April 30, 1987.

Issued in Austin, Texas, on May 1, 1986.

TRD-8604122 Kenneth H. Ashworth
Commissioner
Coordinating Board, Texas College and
University System

Filed: May 2, 1986
For further information, please call (512) 462-8420.



Texas Economic Development Commission Summary Report

Private Activity Bonds (PAB's) which were induced on or after June 19, 1984 are subject to a cap, as stipulated in the Federal Deficit Reduction Act of 1984. This cap is equal \$150 per capital or approximately \$2.4 billion for the State of Texas for calendar year 1986.

House Bill 690 states that the procedure for allocating this cap will be on a first come, first serve basis, with the Texas Economic Development Commission (TEDC) being the tracking agency for the program. The information that follows is a summary report of the allocation activity for the weeks of April 7-25, 1986.

Total unallocated principal amount of
private activity bonds authorized to be allocated
as per the Federal Deficit Reduction Act of 1984
through April 25, 1986:

\$2,380,620,000

Comprehensive listing of bond issues which have received
a reservation date as per House Bill 690
during the week of April 7-25, 1986:

Issuer	User	Amount
NONE	NONE	NONE

Total principal amount of private activity bonds
issued through April 25, 1986;

\$17,730,000

Comprehensive listing of bonds issued as per House Bill
690 from April 7-25:

Issuer	User	Amount
Lower Neches Valley Authority	Graybar Electric Company	\$780,000

Issued in Austin, Texas, on April 30, 1986.

TRD-8604183 Alexa Richter
Administrative Assistant
Texas Economic Development
Commission

Filed: May 5, 1986
For further information, please call (512) 472-5059.

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Texas Housing Agency Correction of Error

Adopted rules submitted by the Texas Housing Agency contained errors as published in the March 25, 1986, issue of the *Texas Register*.

The references to "very low income tenants" in §133.4(a) and (b) on page 1513 should have been deleted by the agency.

The last two lines of §133.13 on page 1514 should read:
". . . including, but not limited to, providing such housing in economically depressed or blighted areas, or providing housing designed and equipped for the elderly or the handicapped."

Texas Department of Human Services

Notice of Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) furnishes this notice of contract award. The request for proposals was published in the August 16, 1985, issue of the *Texas Register* (10 TexReg 3147).

Description of Services. The contractor selected will provide one or more of the following services: training for child-care providers in remote/rural areas to promote the prevention of abuse and neglect in out-of-home care; training in child-care, child development, and child-care facility management.

Name of Contractor and Value of Contract. ECS Learning Systems, Inc., 27635 Bonn Mountain Avenue, San Antonio, Texas, 78260—\$76,381.

Effective Date of Contract. The contract began April 21, 1986, and ends September 30, 1986.

Due Date of Reports. All documents, films, recordings, or reports are due by September 30, 1986.

Issued in Austin, Texas, on May 5, 1986.

TRD-8604196 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: May 5, 1986
For further information, please call (512) 450-3766.

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Correction of Error

A proposed rules submitted by the Texas Department of Human Resources contained an error as published in the April 25, 1986, issue of the *Texas Register* (11 TexReg 1916).

The formula in §29.606(g) should read:
$$\frac{(\text{DRG relative weight} \times \text{standard dollar amount}) \times \text{Eligible LOS}}{\text{DRG mean LOS}}$$

Public Hearing

Because of publication errors in the April 11, 1986, issue of the *Texas Register*, the Texas Department of Human Services will hold another public hearing to accept additional comments on the elimination and limitation of some covered health care services as reflected in the proposed sections published in the April 11, 1986, issue of the *Texas Register* (11 TexReg 1735). The hearing will be held at 10 a.m. on Friday, May 16, 1986, in the Texas Department of Human Service public hearing room, 701 West 51st Street, Austin.

Issued in Austin, Texas, on May 5, 1986.

TRD-8604195 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: May 5, 1986
For further information, please call (512) 450-3766.

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Public Notice

The Texas Department of Human Services (DHS) is publishing a proposed report explaining how it intends to use federal block grant funds for Title XX social services programs in fiscal year 1987. Public hearings were held in December 1985 to involve the public in the development of the 1987 operating plan, which includes block grant expenditures. Citizen advisory committees have also offered the department guidance in developing the budget. The Texas Board of Human Services will meet on May 27, 1986, at 3 p.m., and on May 28, 1986, at 9 a.m. Testimony will be accepted on the use of block grant funds during the meeting which will be held in the public hearing room, Texas Department of Human Services, 701 West 51st Street, Austin. Copies of the reports will be available at the meeting. To request a copy of the report or to provide written testimony, write to Kathleen Hamilton, Assistant Commissioner for Policy Development Support and Analysis-M.C. 500-W, Texas Department of Human Services, P. O. Box 2960, Austin, Texas 78769. Written comments will be accepted through May 23, 1986. Please send comments to the previously mentioned address.

Issued in Austin, Texas, on May 5, 1986.

TRD-8604197 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Filed: May 5, 1986
For further information, please call (512) 450-3766.

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State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for a name change by Farmland Insurance Company, a foreign casualty insurance company. The home office is in Des Moines, Iowa.

(2) Application for admission to do business in Texas of National States Insurance Company, a foreign life insurance company. The home office is in St. Louis, Missouri.

(3) Application for admission to do business in Texas of Georgia American Insurance Company, a foreign life insurance company. The home office is in Atlanta, Georgia.

(4) Application for a name change by Lloyd's, U.S., a domestic Lloyds insurance company. The home office is in Dallas. The proposed new name is Underwriters at Lloyd's, U.S. of Dallas.

(5) Application for admission to do business in Texas of Omnivest Life Insurance Company, a foreign life insurance company. The home office is in Indianapolis, Indiana.

(6) Application for a name change by Bankers Life Company, a foreign life insurance company. The home office is in Des Moines, Iowa. The proposed new name is Principal Mutual Life Insurance Company.

(7) Application for a name change by American Automobile Insurance Company of Illinois, a foreign fire and casualty insurance company. The home office is in Chicago, Illinois. The proposed new name is AMEX Assurance Company.

(8) Application for admission to do business in Texas of New Casualty Insurance Company, a foreign fire and casualty insurance company. The home office is in Denver, Colorado.

(9) Application for incorporation of Physicians Health Plan of North Texas, Inc., to be a domestic health maintenance organization. The home office is in Dallas.

(10) Application for a name change by Physicians Health Plan of Houston, a domestic health maintenance organization. The home office is in Houston. The proposed new name is Physicians Health Plan of Greater Houston.

(11) Application for admission to do business in Texas of Bankers Assurance Company, a foreign accident and health insurance company. The home office is in New York, New York.

Issued in Austin, Texas, on April 29, 1986.

TRD-8604079 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: May 1, 1986

For further information, please call (512) 463-6327.

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Texas Department of Public Safety Consultant Contract

The Texas Department of Public Safety published a proposal request in the February 25, 1986, issue of the *Texas Register* (11 TexReg 1015). This notice regarding the contract for consultant services is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The Texas Department of Public Safety has rejected all bids received to translate an existing audio slide/tape program from the English language to the Spanish language. The goal of this consultant contract was to increase the awareness of members of the Spanish-speaking community concerning the benefits of child safety seats. It has been determined that the bid specifications prepared for this project did not include sufficient detail to insure a quality media product would be produced that would effectively accomplish the overall goal of the contract.

Issued in Austin, Texas, on April 25, 1986.

TRD-8604068 James B. Adams
Director
Texas Department of Public Safety

Filed: May 1, 1986

For further information, please call (512) 465-2000.

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University of Texas System Notice of Training and Services

The Occupational Safety Division of the Texas Department of Health in cooperation with the Industrial Education Department of The University of Texas is providing training and services to enhance and improve health and safety in the Texas mining industry. These services are made available at no charge through the United States Department of Labor State Grants Program. Training and services can be made available at any location within Texas. In addition to staff assistance visits to aid in planning and determining training needs, the following courses are currently available.

Course Titles

Hours

Course Titles	Hours
For Supervisory Managers	
1. Supervisory Management (Basic)	12
2. Supervisory Management (Advanced)	12
3. Understanding and Working with People	12
4. Employee Motivation	12
5. Effective Managerial Communications	12
6. Employee Training and Development	12
7. Safety and the Supervisor	12
8. Safety in-Plant Training	12
9. Emergency First Aid and Response in the Workplace	Variable
10. Stress, Pressure, and Job Burnout	12
11. Alcohol and Drug Abuse	8
12. Round Table Session, Top and Middle Management	3-4

For All Persons (New Miner and Annual Refresher Topics)

1. First Aid	8-16
2. Mandatory Health and Safety Standards	8
3. Accident Prevention Techniques	8
4. Health	8
5. Instructor Training Course	18

For Nonsupervisory Personnel

1. Effective Communications	12
2. Alcohol and Drug Abuse	4

For All Person (Personal Skills)

1. Effective Reading	18
2. Effective Writing	12

Courses may be adjusted to meet organization needs

Mining organizations desiring training or assistance in development of their training program should write to the Industrial Education Department, The University of Texas at Austin, EDA S-13, Austin, Texas 78712. For telephone information, call (512) 471-4633.

Issued in Austin, Texas, on April 30, 1986.

TRD-8604069 Arthur Dilly
Executive Secretary
The University of Texas System

Filed: April 30, 1986

For further information, please call (512) 499-4402.

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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 April 28-May 2, 1986.

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) 463-7905.

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 April 28-May 2, 1986

James Barnett, Pottsboro; wastewater treatment facilities; on Lake Texoma in Loe's Highport Resort Area, approximately four miles northwest of Pottsboro in Grayson County; 11017-01; renewal

U.S. Department of Agriculture-Forest Service, Lufkin; wastewater treatment plant; immediately north of Lake Fannin in the Caddo/LBJ National Grasslands in Fannin County; 12266-01; renewal

The City of La Vernia; wastewater treatment facilities; approximately 2,000 feet east of La Vernia where FM Road 775 crosses Cibolo Creek in Wilson County; 11258-01; renewal

U.S. Department of Agriculture-Forest Service, Lufkin; wastewater treatment plant; about 3.8 miles northeast of FM Road 255 and State Highway 63 intersection, about three miles northwest of the Sam Rayburn Reservoir Dam near the reservoir shore in Jasper County; 12263-02; renewal

Lakeway Municipal Utility District No. 1, Austin; wastewater treatment facilities; approximately 2 miles northwest of the intersection of Lohmans Crossing Road and FM Road 620 in Travis County; 11281-01; renewal

Galveston County Fresh Water Supply District No. 6, Galveston; wastewater treatment facilities; on the eastern end of Wilson Point in Jones Bay, Galveston County; 10879-01; amendment

Texsun Corporation, Weslaco; citrus juice canning plant; in the northwest quadrant defined by the intersection of Railroad Street and Republic Street in the City of Weslaco, Hidalgo County; 01553; amendment

Harris County Utility District No. 5, Kingwood; sewage treatment plant; approximately 7¼ miles northeast of the intersection of U.S. Highway 59 and FM Road 1960 and 4½ miles east of U.S. Highway 59, between Bear Branch and Bens Branch, north of the West Fork Arm of Lake Houston in Harris County; 11872-01; amendment

City of Houston; wastewater treatment facility; approximately 1000 feet west of IH 45 and 2700 feet north of Gears Road, on the north side of and adjacent to Greens Bayou in Harris County; 10495-115; renewal

Sheldon Road Municipal Utility District, Houston; sewage treatment plant; approximately ¼ mile northwest of the intersection of U.S. Highway 90 and Sheldon Road in Harris County; 10541-02; renewal

City of Houston; wastewater treatment plant; on West Bellfort Avenue, approximately 1.3 miles west of U.S. Highway 59 in Harris County; 10495-107; renewal

City of Humble; wastewater treatment facility; approximately 150 feet west of the intersection of Kingfisher and Pheasant Run and approximately one mile southwest of the intersection of Adams Bennett Road and

Old Humble Road, south of the City of Humble, Harris County; 11905-01; renewal

Refugio County Water Control and Improvement District No. 1, Tivoli; wastewater treatment facilities; approximately 0.1 mile west of the intersection of State Highways 113 and 35 in Tivoli, Refugio County; 10256-01; renewal

El Paso Water Utilities Public Service Board, El Paso; quarry plant; at the intersection of IH 10 and Executive Center Boulevard in El Paso County; 10408-09; renewal

Century Corporation, Houston; wastewater treatment plant; approximately 1¼ miles south-southeast of the intersection of U.S. Highway 59 and FM Road 762 and one mile south of FM Road 762 in Fort Bend County; 13267-01; new

City of Manor; wastewater treatment facilities; approximately ¼ mile west of State Highway 212 and ½ mile south of U.S. Highway 290 on the old Austin Road in Travis County; 11003-01; renewal

City of Corsicana; wastewater treatment plants (Outfall 103 and Outfall 203); Outfall 103 is located approximately 9,500 feet east-southeast of the intersection of State Highway 31 and IH 45 in Navarro County. Outfall 203 is located approximately 9,000 feet southeast of that same intersection; 10402-03; renewal

Issued in Austin, Texas, on May 2, 1986.

TRD-8604180 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: May 2, 1986
For further information, please call (512) 463-7898.



Enforcement Order

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Falcon Steel Company on April 30, 1986, assessing \$9,360 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pat Barnhard, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on April 30, 1986.

TRD-8604107 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: May 1, 1986
For further information, please call (512) 463-7898.



Invitation for Bids

This is a notice to bidders of the intention of the Texas Water Commission (TWC) to let contract for construction of Triangle Chemical Company Remedial Action.

Sealed proposals addressed to David Sorrells, P.E., chief, Superfund Section, Hazardous and Solid Waste Division, will be received until 3 p.m. local prevailing time on June 8, 1986, for furnishing all labor, equipment, materials, supplies, and supervision necessary for construction of the Triangle Chemical Company Remedial Action.

Specified work shall consist of treating contaminated soil by tilling, removal, and disposal of hazardous waste from tanks and drums, and decontamination of the building. The contractor will supply all labor, materials, supplies, and supervision as shown and specified in accordance with the project plans and specifications for the Triangle Chemical Company site. The site is located on Texas State Highway 87, approximately 1½ miles northeast of Bridge City.

Plans and specifications may be examined without charge at the Texas Water Commission, Room 304N, 1800 Brazos Street, Austin, Texas, or one copy may be obtained for the nonrefundable purchase price of \$200 at Roy F. Weston, Inc., 5599 San Felipe, Suite 700, Houston, Texas 77056, (713) 621-1620.

A certified or cashier's check, or an acceptable bid bond in an amount not less than 5.0% of the total bid, shall accompany each bid as a guaranty that, if awarded the contract, the bidder will promptly enter into contract with the TWC and furnish bonds on the forms provided.

The successful bidder or bidders will be required to furnish a performance bond and a payment bond, each in the amount of the contract, written by a responsible surety company authorized to do business in the State of Texas, and satisfactory to the TWC as required by Texas Civil Statutes, Article 5160.

Bidders are expected to inspect the site of the work as provided in the instructions to bidders and to inform themselves of all local conditions. Time of completion shall be

40 calendar days, including Saturdays, Sundays, and legal holidays.

Attention to bidders is directed to the provisions of House Bill 54, Chapter 45, passed by the 43rd Legislature, requiring that not less than the general prevailing rates of per diem wages for work of similar character in the locality where the work is performed shall be paid all laborers, workmen, and mechanics employed in the construction of public works. Also, the successful bidder will be required to comply with the Labor Standard Provisions for Federally Assisted Construction Contracts (Form 5720-4).

No bid may be withdrawn after the scheduled closing time for receipt of bids for at least 90 calendar days.

In case of ambiguity in statement of the price in the bids, the TWC reserves the right to consider the most advantageous construction thereof, or to reject the bid.

Any contract or contracts awarded under this invitation for bids are expected to be funded in part by a grant from the United States Environmental Protection Agency. Neither the United States nor any of its departments, agencies, or employees is or will be a party to this invitation for bids or any resulting contract. This procurement will be subject to regulations contained in 40 Code of Federal Regulation Part 33.

Equal opportunity in employment: All qualified applicants will receive considerations for employment without regard to race, color, religion, sex, or national origin. Bidders on this work will be required to comply with the President's Executive Order 11246, as amended. The requirements for bidders and contractors under this order are explained in the specifications.

Issued in Austin, Texas, on April 30, 1986

TRD-8804081

James K. Rourke, Jr.
General Counsel
Texas Water Commission

Filed: May 1, 1986

For further information, please call (512) 463-7785.

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