

# TEXAS REGISTER

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Office of the Secretary of State

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# NOTES ON THE ISSUE

Prior to the reorganization of state water boards and commissions, the Texas Water Quality Board had adopted 25 subchapters of private sewage facility regulations governing as many water systems. The numerous subchapters were necessitated by the variety of geographical and geological formations throughout the state requiring differing sewage systems. After the reorganization, these rules came under the Department of Water Resources. The department adopts two subchapters of private sewage facility regulations in this issue. The first group, governing the Sam Rayburn Reservoir, amends the preceding board's adoption; the second, those on the Mackenzie Reservoir, is new and brings the number of water systems thus governed to 26. These, as the other private sewage facility regulations, charge local authorities with enforcement, inspection, testing, and licensing. The fees adopted in these rules are those suggested by the local authorities and cover their costs. The difference between the fee schedules in these adoptions is the result of the differing sizes of the reservoirs to be governed.

Recent federal regulation directed Texas to restrict the number of bobcat pelts leaving the state for international exportation. The Texas Parks and Wildlife Department had no authority to regulate the bobcat and/or its pelts until an executive order (3 TexReg 230) directed that agency to promulgate such rules. The Proposed Rules section contains the department's response to the executive order and the federal directive.

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

*Artwork: Gary Thornton*

## TEXAS REGISTER



*Steven C. Oaks  
Secretary of State*

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The *Register* contains executive orders of the governor; summaries of attorney general's opinions and summaries of requests for opinions; emergency rules, proposed rules, and adopted rules of state agencies; notices of open meetings; and miscellaneous notices of general interest to the public of Texas.

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## Appointments

### Stephen F. Austin State University, Board of Regents

*To be effective immediately for a six-year term to expire January 31, 1983:*

R. E. Samuel, Jr.  
P.O. Box 667  
Madisonville, Texas 77864

Mr. Samuel is replacing Robert C. Gray of Austin, Travis County, who resigned.

### West Texas State University, Board of Regents

*For a six-year term to expire August 31, 1983:*

Mrs. Thomas M. Watlington  
3010 Travis  
Amarillo, Texas 79109

Mrs. Watlington is replacing Dick Todd of Crowell, Foard County, whose term expired.

## State Board of Insurance

*For a six-year term to expire January 31, 1983:*

Durwood Manford, Jr.  
5405 Highland Crest  
Austin, Texas 78731

Mr. Manford is being reappointed.

Issued in Austin, Texas, on January 23, 1978.

Doc. No. 780602      Dolph Briscoe  
Governor of Texas

Filed: January 25, 1978, 9:41 a.m.

For further information, please call (512) 475-4571.

## Requests for Opinions

### Summary of Request for Opinion RQ-1811

Request for opinion sent to the Attorney General's Opinion Committee by Truett Latimer, executive secretary, Texas Antiquities Committee, Austin.

**Summary of Request:** Are the rules of the Texas Antiquities Committee (published in the *Texas Register* on December 14, 1976 (1 TexReg 3504)), relating to underwater cultural resource surveys which must be conducted by persons undertaking construction in submerged areas, valid?

Doc. No. 780536

## Opinions

### Summary of Opinion H-1115

Request from Robert J. Winn, executive director of the Governor's Coordinating Office for the Visually Handicapped, Austin, concerning implementation of the statutory program for purchases of blind-made products by the state.

**Summary of Opinion:** Article 664-5, Vernon's Texas Civil Statutes, being a later expression of legislative intent, prevails over conflicting provisions of Article 664-6, Vernon's Texas Civil Statutes. As a result, the state is required to purchase available products and services from nonprofit agencies for the blind at the fair market price set by the Texas Committee on Purchases of Blind-Made Products and Services.

Doc. No. 780537

### Summary of Opinion H-1116

Request from Dr. M. W. Roney, president, Texas State Technical Institute, Waco, concerning the status of the Texas State Technical Institute as an agency of the State of Texas.

**Summary of Opinion:** The Texas State Technical Institute is an agency of the State of Texas.

Doc. No. 780538

### Summary of Opinion H-1117

Request from L. Alvis Vandygriff, commissioner, Texas Savings and Loan Department, Austin, concerning cumulative voting at annual meetings of savings and loan associations.

**Summary of Opinion:** In the absence of any bylaw provision to the contrary, a member of a savings and loan association may not cumulate his votes.

Doc. No. 780539

### Summary of Opinion H-1118

Request from A. R. Schwartz, State Senator, Austin, concerning the procedure for expungement of police records.

**Summary of Opinion:** Senate Bill 471, Acts of the 65th Legislature, 1977, Chapter 747, at 1880, codified as Articles 55.01-55.05, Texas Code of Criminal Procedure, does not preempt the right of local public entities to destroy arrest records pursuant to the same authority by which such records are maintained, but merely requires a law enforcement agency to destroy those records in certain instances.

Doc. No. 780565

### Summary of Opinion H-1119

Request from Alton D. Ice, executive director, Advisory Council for Technical-Vocational Education in Texas, Austin, concerning whether Advisory Council for Technical-Vocational Education is a state agency.

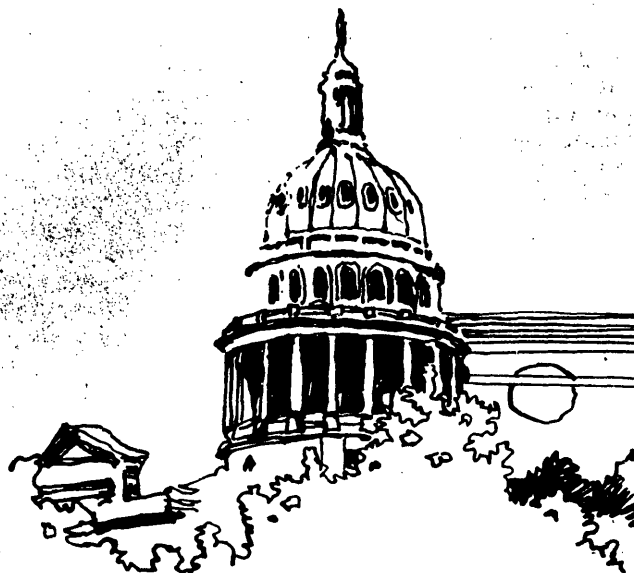
**Summary of Opinion:** The Advisory Council for Technical-Vocational Education in Texas is a state agency and its executive director is entitled to reimbursement for actual travel expenses under Article V, Section 15a, of the Appropriations Act.

Issued in Austin, Texas, on January 24, 1978.

Doc. No. 780601

C. Robert Heath  
Opinion Committee Chairman  
Attorney General's Office

For further information, please call (512) 475-5445.





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

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

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

## Texas Department of Mental Health and Mental Retardation

### Client (Patient) Care

#### Public Responsibility Committees 302.04.09

Subchapter J of the Mentally Retarded Persons Act of 1977 (the "act"), Article 5547-300, Texas Civil Statutes, contains provisions concerning the establishment, operation, powers, and duties of public responsibility committees at each facility of the Texas Department of Mental Health and Mental Retardation. A public responsibility committee is an independent entity composed of individuals not affiliated with a department facility. A public responsibility committee acts primarily as a third-party mechanism to safeguard the legal rights of clients of the department. A public responsibility committee also acts as an investigating body on behalf of clients. Because of the enactment of Subchapter J of the act, the department's rules concerning public responsibility committees must be amended to be made to conform to the statutory provisions. In order that the safeguarding of clients' legal rights by public responsibility committees may be accomplished in accordance with the statutory provisions, the department has determined that an imminent peril to the public health, safety, and welfare requires the adoption of amendments to Rules 302.04.09.001, .003, .004, .005, .006, .007, .008, and .010 on an emergency basis, with such amendments to become effective immediately upon filing with the Texas Register Division of the Office of the Secretary of State.

The emergency amendment to Rule .001 amends the rule to indicate that one purpose of the rules is to clarify the powers of public responsibility committees at all departmental facilities.

The emergency amendment to Rule .003 changes the language of subsection (5) so that the term "client" is used. Under the act, the term "client" includes a resident. Subsection (6) of this rule is also amended to enlarge the definition of "affiliated" and to specify those persons who may not serve

on a public responsibility committee. Subsection (7) of this rule is amended to change the requirement for consent so that it conforms to the act. Subsection (9) adds the definition of "advocacy system" and deletes that of "consent committee."

The emergency amendment to Rule .004 changes the functions of the public responsibility committee. Subsections (1), (2), (3), and (4) of this rule are amended to conform to the statutory language of the act.

The emergency amendment to Rule .005 amends membership requirements for public responsibility committees contained in Section (a) of this rule to conform to the act. Section (b) is amended to provide that members are to be chosen without regard to age or handicap. Section (d) has been amended to provide for the selection of one of the public responsibility committee members as secretary of the committee. Section (e) is amended to provide that no member of a public responsibility committee may serve more than 10 consecutive one-year terms. Section (f) is amended to allow the public responsibility committee to request clerical assistance from the volunteer services office. Section (g) is amended to increase the amount of training which public responsibility committee members are to receive. Section (h) is amended to include cooperation between the staff and the public responsibility committee. Section (i) is amended to drop from the public responsibility committee a member who fails to attend two consecutive quarterly meetings. A new Section (j) is added which provides a method for replacing members of a public responsibility committee.

The emergency amendment to Rule .006 amends Section (a) to require the public responsibility committee to investigate an instance of abuse or denial of rights within 10 days of the receipt of the complaint. Section (c) is amended to allow staff members to attend public responsibility committee meetings upon approval of the public responsibility committee. Also, a new Section (d) is added to provide for reimbursement of public responsibility committee members' travel expenses.

The emergency amendment to Rule .007 amends Section (a) to provide for publicizing of the public responsibility committee and its role. Subsections (1), (2), (3), and (4) are added to Section (a) to set forth requirements which are to be met in publicizing a public responsibility committee. Section (b) is amended to provide for the public responsibility committee making recommendations to the department. Section (c) of this rule is amended due to the relettering of an exhibit. Section (e) is amended to provide a method of sending verbal complaints to a public responsibility committee. Section (f) is amended to provide for the interview of witnesses by a public responsibility committee. Section (g) is amended to provide access to records of patients and clients by public responsibility committees during investigations. Section (h) is amended to read as the former Section (g). Section (i) is amended to refer to the role of the advocacy system in protecting the rights of the mentally retarded. Sections (j), (k), (l), (m), and (n) are relettered accordingly. Section (o) is deleted.

The emergency amendment to Rule .008 amends the first subsection to read as the former subsection (2). Subsections (3), (4), and (5) are renumbered accordingly. Subsection (6) is amended to provide a format for informed consent. Subsection (7) is deleted.

The emergency amendment to Rule .010 is amended by deleting subsections 2(A), 2(B), and 2(C), which made reference to specific Rules of the Commissioner of MH/MR Affecting Client (Patient) Care.

The emergency amendments to Rules .001, .003, .004, .005, .006, .007, .008, and .010 are promulgated under the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes, and Sections 50 and 60 of Article 5547-300, Texas Civil Statutes.

**.001. Purpose.** The purpose of these rules is to clarify the responsibilities, procedures, obligations, and *powers* [constraints] of public responsibility committees at all facilities of the Texas Department of Mental Health and Mental Retardation.

**.003. Definitions.** In these rules:

(5) "Patient or *client* [resident]" means a person receiving services, in residence or through outpatient or outreach programs, from a facility of the department.

(6) "Affiliated" means any employment, *financial*, or other relationship between a person and a facility of the department, i.e., full-[time employee,] or part-time employee, member of a governing board or panel, paid [consultant] or unpaid consultant, *contractor, supplier, or a person related to any of such persons within the second degree of consanguinity or affinity. Persons thus prohibited from serving on a PRC include spouse, parent, grandparent, sibling, child, or grandchild, or any of these relationships to a spouse of an employee, member of a governing board or panel, consultant, contractor, or supplier.*

(7) "*Legally adequate consent*" ["Informed consent"] means *consent given by a person or his legally authorized representative when each of the following conditions has been met:*

(A) *Legal capacity: the person giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage his personal affairs by an appropriate court of law; or the person giving the consent is the parent of a patient or client under 18 years of age who is not and has not been married or has not had his disabilities of minority removed for general purposes; or the person giving consent is the guardian who, under court order, has been appointed guardian of the person of the patient or client.*

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

(C) *Voluntariness: the consent has been given voluntarily and free from coercion and undue influence.* [the knowing consent of an individual or his legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary to informed consent include:

[(A) A fair explanation of the procedures to be followed, and their purposes, including identification of any procedures which are experimental.

[(B) A description of any attendant discomforts and risks reasonably to be expected.

[(C) A description of any benefits reasonably to be expected.

[(D) A disclosure of any appropriate alternative procedures that might be advantageous for the subject.

[(E) An offer to answer any inquiries concerning the procedures.

[(F) An instruction that the person is free to withdraw his consent and to discontinue participation in the project or activity at any time without prejudice to the subject (see Exhibit G—.04.09.003 which is attached to and made a part of these rules).]

(9) "*Advocacy system*" ["Consent committee"] means the *system of advocacy for the developmentally disabled, created pursuant to Section 113 of Public Law 94-103* [committee of that name established under the requirements of Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Department Procedures for the Protection of the Rights of Humans Involved in Research, 302.04.21].

**.004. Functions of the PRC.** The PRC is an independent, impartial *third-party mechanism* [entity] which serves to protect, preserve, [and] promote, *and advocate for the health, safety, welfare, and legal* [the basic dignity] and human rights of *the patients and* [or] *clients* [residents] served by the department. Its functions *shall* include, but are not limited to, the following:

(1) *protecting and advocating for the health, safety, welfare, and legal and human rights of patients and clients served by the department;* [continually monitoring and reviewing those conditions and relationships essential to protect patients' or residents' dignity and human rights]

(2) *inquiring into or investigating and responding to comments, suggestions, or complaints made with regard to patients and clients of the department;* [responding objectively and constructively to comments, suggestions, or complaints made by patients or residents or on their behalf, and]

(3) *ensuring that patients and clients are informed of their rights and the means of protecting those rights; and* [advising patients or residents of their rights and the means of protecting those rights.]

(4) *submitting instances of abuse or denial of rights to the appropriate authorities and the advocacy system for appropriate action.*

Members of the PRC should be especially familiar with *the facility, its policies, the clients' and patients' rights handbooks*, and the Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care.

**.005. Membership.**

(a) *Seven* [A minimum of five] persons who are neither *affiliated with the facility, nor are* [employees,] patients[,] or *clients*, [residents] shall be selected by the executive committee of each facility's volunteer services council to serve voluntarily as members of the PRC. *The committee shall include representation by parents, guardians, consumer groups, and organizations which advocate for patients and clients.* In making such appointments, the executive committee *shall* [should] consult with *the local parents' associations and* [or] *interest groups within the service delivery*



area, if any exist, to secure recommendations for such appointments. *Consultation shall include informing local parents' associations and interest groups of the selection process, time and place of the meeting, and an invitation to submit nominations. Public notice shall be given of the members selected.*

(b) PRC members must reside in the area served by the facility and must be capable of mature, objective judgment of medical, legal, social, and ethical considerations pertaining to the committee's work. They shall be chosen without regard to sex, race, color, creed [or] national origin, age, or handicap.

(d) The PRC shall at the beginning of each fiscal year elect one of its members as chairperson and another member as secretary.

(e) *Members shall be appointed to serve a one-year term. No members shall serve more than 10 consecutive terms. A current roster of all PRC members will be maintained by Volunteer Services, Central Office, and may be forwarded to the advocacy system.* [Terms of service should be staggered for purposes of continuity. No member shall serve more than six consecutive years. A current roster of all PRC members will be maintained by Volunteer Services, Central Office.]

(f) The coordinator of volunteer services at each facility will, at the request of the PRC, serve as staff liaison to the PRC. The volunteer services office at the facility will provide clerical assistance *at the request of the PRC* and will be responsible for ordering PRC stationery and PRC report logs as needed.

(g) Broad general knowledge of the facility is essential for all PRC members. They *shall* [should] participate in training, including at least one general orientation to the facility and its policies for volunteers, plus additional specialized training related to their specific assignment as a member of a PRC.

(h) PRC members and staff *should cooperate with each other to develop good working relationships, mutual acceptance, and cooperation* [staff members in a non-threatening atmosphere to develop good working relationships, mutual acceptance, and understanding].

(i) A member who, in the absence of an acceptable reason, fails to attend two [any three] consecutive quarterly meetings of the PRC shall automatically be dropped from membership.

(j) *Any member of a PRC who fails to comply with the provisions of these rules may be removed by the executive committee of the volunteer services council upon recommendation by a majority of the PRC. Replacement of the members shall be in accordance with the provisions of Rule .005 of these rules.*

#### .006. Meetings.

(a) The PRC shall meet as often as necessary to fulfill its duties, but at least quarterly. *In investigating an instance of patient or client abuse or denial of rights, the PRC shall initiate an investigation or inquiry within 10 days of receipt of a complaint. The PRC shall determine the times and locations of its meetings. There must be a quorum of the committee present at the meeting to conduct business. The quorum of the committee shall be a majority of its total membership, and votes shall be decided by a simple majority of those present.* [It is advisable that meetings be held at the facility. The quorum of the commit-

tee shall be a majority of its total membership, and votes shall be decided by a simple majority of those present.]

(c) *Staff members may ask to attend PRC meetings. Permission for such attendance shall be granted at the discretion of the PRC.* [Staff members may upon their own request attend meetings, subject to the approval of the PRC.]

(d) *Members of a PRC shall serve without compensation other than reimbursement for actual expenses, including travel expenses necessarily incurred in the performance of their duties. Such expenses shall be paid in accordance with the provisions of the current state appropriations act.*

#### .007. Procedures and Responsibilities.

(a) [The PRC at each] *Each facility shall be responsible for informing patients and clients* [residents], their families, and the general public of the [its] existence, [and] purpose, and composition of [that] the PRC [is an external body not composed of departmental employees (see Exhibit A—.04.09.007 and Exhibit B—.04.09.007)]. *Each facility shall:*

(1) *at least annually distribute news releases to news media, stressing the fact that the PRC is an independent, impartial body and that none of its members are affiliated with TDMHMR;*

(2) *publish brief statements of PRC purpose and accessibility in issues of all facility publications;*

(3) *post printed notices conspicuously in all appropriate facility buildings; and*

(4) *include PRC information among handout materials routinely given to newly admitted clients, their families, and new employees (see Exhibit A—.04.09.007).*

(b) Each PRC shall receive, investigate, and report complaints made to it by or on behalf of patients or clients [residents] and *shall* [may] make appropriate recommendations to the facility superintendent or director, *to the deputy commissioner of the department with authority over the facility, and, if necessary, to the commissioner.* The PRC [also] will respond to questions [or suggestions] related to its purpose.

(c) The PRC shall record all complaints received in the PRC log, illustrated in Exhibit E[F]—.04.09.007, which is attached to and made a part of these rules.

(e) *Complaints must be sent directly to the PRC. All complaints must be reduced to writing and should be signed. However, a PRC member, upon receipt of an anonymous complaint, may reduce the complaint to writing and bring it to the PRC's attention. If a complainant is unable to sign or write, the complaint may be dictated and the complainant's mark confirmed by a witness. If a member of the PRC receives an oral complaint, that member must reduce that complainant to writing and present it to the PRC.* [All complaints must be written and signed. If complainant is unable to sign or write, the complaint may be dictated and the complainant's mark confirmed by a witness. Complaints should be sent directly to the PRC.]

(f) *During an investigation, PRC members may interview the following persons, where appropriate:* [If interviews are necessary during an investigation, one or more PRC members may interview the following persons:]

(1) the complainant,

(2) the patient or client [resident], if other than the complainant,

(3) any other patient or client [resident] involved in the complaint as participants or observers,

- (4) family members [if indicated],
- (5) staff members [if deemed appropriate by the committee],
- (6) other nonstaff members (volunteers) [if appropriate].

(g) *When investigating complaints of abuse or denial of rights of a client who has a primary or secondary diagnosis of mental retardation, the PRC shall have the authority with or without notice to inspect the facility which offers services to the mentally retarded person and records relating to the diagnosis, evaluation, or treatment of such person, as those records relate to the complaint of abuse or denial of rights. When investigating complaints of abuse or denial of rights of a patient who has a diagnosis of mental illness, the PRC shall have the authority with or without notice to inspect the facility which offers services to the mentally ill person. However, the PRC shall have access to the hospital records relating to the treatment of the mentally ill person only under the provisions of Article 5547-87, Vernon's Annotated Civil Statutes, and rule of the commissioner of MHMR, 302.04.16.008. [PRC members should observe the facility's established schedules and procedures during the investigation of any complaint.]*

(h) *PRC members should observe the facility's established schedules and procedures during the investigation of any complaint. [The PRC shall report its findings and recommendations to the superintendent/director or designee.]*

(i) *When the PRC determines that an instance of abuse or denial of rights has occurred which involves a client who is mentally retarded, the PRC shall report this instance to the advocacy system and to the appropriate authorities. [Each PRC shall maintain confidential records of complaints received, acknowledge receipt of complaints (see Exhibit D—.04.09.007, which is attached to and made a part of these rules), and inform the patients, residents and/or complainants of any action taken (see Exhibit E—.04.09.007, which is attached to and made a part of these rules). PRC stationery may be used for correspondence and notices (see Exhibit C—.04.09.007, which is attached to and made a part of these rules).]*

(j) *Each PRC shall maintain confidential records of complaints received, acknowledge receipt of complaints (see Exhibit C—.04.09.007, which is attached to and made a part of these rules), and inform the patients, clients, and/or complainants of any action taken (see Exhibit D—.04.09.007, which is attached to and made a part of these rules). PRC stationery may be used for correspondence and notices (see Exhibit B—.04.09.007, which is attached to and made a part of these rules). [The chairperson will each month send a copy of the PRC Log to:*

- (1) the commissioner, TDMHMR, or his designate in Central Office,
- (2) the superintendent or director of facility,
- (3) other individuals designated by superintendent or director of facility.]

(k) *The chairperson will each month send a copy of the PRC log to:*

- (1) the commissioner or his designee in Central Office,
- (2) the superintendent or director of the facility.

*The PRC shall present an annual report of its work to the commissioner and the advocacy system. This report shall include a description of all complaints processed and action taken to remedy the complaint, if any. The names of all individuals involved shall be kept confidential. [To assure compliance with the legal requirements of confidentiality relating to matters concerning patients or residents, it is mandatory that PRC members make no statements regarding either a complaint or an investigation to any representative of the news media or any individual or group other than those designated by the superintendent or director. Consultation from the department's Legal Division will be available to each PRC.]*

(l) *To assure compliance with the legal requirements of confidentiality relating to matters concerning patients or clients, no individual member of the PRC or the PRC shall make statements regarding either a complaint or an investigation except as provided in (b) above, unless legally adequate consent is obtained for the release of the information held by the PRC. Consultation with the department's Legal Division will be available to each PRC. [The responsibility to provide redress to justifiable complaints shall not lie with the PRC. The superintendent or director shall take such corrective action as is appropriate. If corrective action is not taken by the superintendent or director within a reasonable time, the PRC may file a written appeal to the appropriate deputy commissioner.]*

(m) *The responsibility to provide redress to justifiable complaints shall not lie with the PRC. The superintendent or director shall take such corrective action as is appropriate and report his action to the PRC. If corrective action is not taken by the superintendent or director within a reasonable time, or if the action is deemed insufficient or inappropriate by the PRC, the PRC may file a written appeal to the deputy commissioner with responsibility for the facility, the commissioner, and the Texas Board of Mental Health and Mental Retardation. [When appropriate, the PRC may assist a patient or resident in securing legal counsel, if requested by the patient or resident, but may not offer any legal advice.]*

(n) *When appropriate, the PRC may assist a patient or client in securing legal counsel but may not offer any legal advice. [At facilities where a consent committee is required in accordance with the Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Department Procedures for the Protection of the Rights of Humans Involved in Research, 302.04.21, the PRC or a portion of its members may serve as the consent committee. Should the PRC not assume the responsibilities of the consent committee, then individual members of the PRC may serve on the consent committee. The membership and duties of the consent committee shall be governed by those same rules.]*

(o) *The PRC may, upon request of the superintendent or director, assist in providing monitoring for any aspect of patient or resident work-related programs. This assignment for the PRC would provide additional assurances of the patient's or resident's rights under the Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Employment of Patients, Residents Under the Fair Labor Standards Act, 302.04.08, and that the patient or resident worker or other work-related programs such as sheltered workshops are operating in a manner con-*

sistent with the appropriate laws and policies. Typical assignments may include, but are not limited to, the following:

- (1) the review of records to ascertain that the established commensurate rate is being paid patient or resident workers;
- (2) monitor work placement for evidence of patient or resident worker benefit;
- (3) the providing of information, orally or in writing, upon request to a patient or resident worker concerning his coverage under the act, his work assignment, and the rate of pay.]

.008. *Exhibits.* The following exhibits are attached to and are a part of these rules:

(1) *Exhibit A—.04.09.007—Notice.* This document illustrates a form that may be used to inform people of the existence of the facility's public responsibility committee as well as the nature of its work, its address, and the fact that it is independent of the department. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit A—.04.09.007—Suggestions for publicizing the PRC's existence, purpose, and accessibility. This document suggests various methods of informing the public of the nature, existence, purpose, and accessibility of a facility's public responsibility committee. The methods suggested include news releases, statements in facility publications, letters, printed notices posted at the facility, badges (name tags), and handout materials. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas.]

(2) *Exhibit B—.04.09.007—Stationery for the public responsibility committees serving patients of Austin State Hospital.* This document illustrates a type of stationery that may be used by a public responsibility committee. The stationery may be used by the committee for its correspondence and notices. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit B—.04.09.007—Notice. This document illustrates a form that may be used to inform people of the existence of the facility's public responsibility committee as well as the nature of its work, its address, and the fact that it is independent of the department. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(3) *Exhibit C—.04.09.007—Acknowledgment.* This form gives a sample form which may be used by the facility's public responsibility committee in acknowledging the receipt of a complaint and assuring an investigation of the complaint. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit C—.04.09.007—Stationery for the public responsibility committees serving patients of Austin State Hospital. This document illustrates a type of stationery that may be used by a public responsibility committee. The stationery may be used by the committee for its correspondence and notices. A copy

of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(4) *Exhibit D—.04.09.007—Notice informing patients, clients, or complainants of any action taken.* This exhibit illustrates a form that may be used by a facility's public responsibility committee to inform any person who has complained to it that the committee has completed its investigation of the complaint. The form also informs the complainant of whatever action has been taken as a result of the investigation. A copy of this exhibit may be obtained from the Central Office of Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit D—.04.09.007—Acknowledgment. This form gives a sample form which may be used by the facility's public responsibility committee in acknowledging the receipt of a complaint and assuring an investigation of the complaint. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(5) *Exhibit E—.04.09.007—PRC log.* This exhibit illustrates the form to be used by the facility's public responsibility committee for the recording of all of the complaints reviewed by the committee. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit E—.04.09.007—Notice informing patients, residents, or complainants of any action taken. This exhibit illustrates a form that may be used by a facility's public responsibility committee to inform any person who has complained to it that the committee has completed its investigation of the complaint. The form also informs the complainant of whatever action has been taken as a result of the investigation. A copy of this exhibit may be obtained from the Central Office of Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(6) *Exhibit F—.04.09.003—Format for informed consent.* This exhibit provides forms for certificates with reference to the securing of legally adequate consent for the disclosure of client-identifying information. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Capitol Station, Austin, Texas 78711. [Exhibit F—.04.09.007—PRC log. This exhibit illustrates the form to be used by the facility's public responsibility committee for the recording of all of the complaints reviewed by the committee. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

(7) *Exhibit G—.04.09.003—Format for informed consent.* This exhibit provides forms for certificates with reference to the securing of informed consent for a subject's participation in a research program. The forms provided are a certificate of the person explaining the proposal, a certificate of the person giving consent, and a certificate of assent by the proposed subject. A copy of this exhibit may be obtained from the Central Office of the Texas Department of Mental Health and Mental Retardation, 909 West 45th Street, Austin, Texas 78711.]

.010. *References.* Reference is made to the following statute and rules of the commissioner:

- (1) Article 5547-87, Vernon's Annotated Civil Statutes.
- (2) Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care.

[(A) Department Procedures for the Protection of the Rights of Humans Involved in Research, 302.04.21.;

[(B) Restraint and Seclusion, 302.04.06.;

[(C) Employment of Patients, Residents Under the Fair Labor Standards Act, 302.04.08.]

Issued in Austin, Texas, on January 20, 1978.

Doc. No. 780523      Kenneth D. Gaver, M.D.  
Commissioner  
Texas Department of Mental Health and  
Mental Retardation

Effective Date: January 20, 1978

Expiration Date: May 20, 1978

For further information, please call (512) 454-3761.

## Railroad Commission of Texas

### Liquefied Petroleum Gas Division Liquefied Petroleum Gas Docket No. 1 051.05.03

The Railroad Commission of Texas is renewing the effectiveness of an emergency amendment to Rule 051.05.03.023, Authorized Containers. The amendment was adopted on September 27, 1977, and published in the October 4, 1977, issue of the *Texas Register* (2 TexReg 3768). The expiration date for the emergency amendment renewal is March 24, 1978.

Doc. No. 780552

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

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

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

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

## Coordinating Board, Texas College and University System

### Program Development

#### Operational Provisions for Texas Public Junior Colleges 251.02.17

The Coordinating Board, Texas College and University System, is proposing to amend Rule 251.02.17.013, prescribing the reporting requirements for state reimbursement to public community/junior colleges. On April 22, 1977, the Coordinating Board adopted Rule 251.02.17.013, revising the procedures for the reporting of contact hours for state reimbursement purposes by public community/junior colleges. The colleges were expected to keep their 1977-78 records and prepare their reports to the Coordinating Board in accordance with the rule. Since the adoption of the April rule, the State Auditor's Office has initiated an audit procedure which differs from the Coordinating Board rule and institutional practices. The proposed revision of Rule .013 is to assure that the board's rule and the institutions' practices conform to the new auditing procedures of the State Auditor's Office.

The staff of the Coordinating Board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment of Rule 251.02.17.013 is invited. Comments may be submitted for a period of 30 days from the date of publication by telephoning the office of the Coordinating Board at (512) 475-4361 or by writing to the Coordinating Board at P.O. Box 12788, Austin, Texas 78711.

The amendment of Rule 251.02.17.013 is proposed under the authority of Section 61.062, Vernon's Texas Codes Annotated.

#### .013. *Reporting for State Reimbursement Purposes.*

(a) *Attendance records will be maintained by the community college on all students in all classes through two full weeks following the dates for reporting official enrollments.*

(b) *Contact hours credit will be given for all students in attendance on the official reporting date provided that all other legal requirements are met.*

(c) *The state auditor will examine attendance records for the two weeks following the official reporting date for any student not present on the official reporting day.*

(d) *The contact hours associated with any student who attends at least one day during that two-week period will be eligible for inclusion if that student has attended at least one time prior to the official reporting day, provided the class has met by the official reporting day and provided that all other legal requirements are met. Any student who is not in attendance on the official reporting day and does not attend at least one class session during the subsequent two weeks will be disallowed, unless the institution can provide specific evidence that the student was in fact in regular attendance for the remainder of the semester and had met all other legal requirements.*

(e) *For purposes of definition, the official reporting day also means the last previous meeting of a class not scheduled to meet on the official reporting day. The official reporting dates are those dates specified in the Educational Data Reporting System for Public Community Colleges.*

[Contact hours generated by any student who has not been in attendance between the official date of his registration and the official date for reporting enrollment for that class shall not be counted for appropriation or state reimbursement purposes. Contact hours generated by any student who has withdrawn or been withdrawn by the college from a class prior to the official reporting date for that class shall not be counted for appropriation or state reimbursement purposes. Contact hours generated by a student enrolling after the last class meeting prior to the official reporting date but prior to such reporting date shall be counted for state reimbursement provided the student attends the next scheduled class meeting.]

Doc. No. 780567

## Financial Planning

### Procedures and Criteria for Funding of Family Practice Residency Programs 251.03.05

The Coordinating Board, Texas College and University System, is proposing to adopt Rules 251.03.05.001-.009 on the procedures and criteria for funding family practice residency programs. The Family Practice Residency Advisory Committee proposed at the board's October meeting to recommend procedures and criteria for funding family practice residency programs for action by the board in January. In order to allocate the 20 percent (\$170,540) of the fiscal year 1978 appropriation for family practice residency programs reserved for developing new programs and expanding existing programs, it is necessary to adopt procedures and criteria to be used in evaluating requests for funding grants from existing programs or for programs in developmental stages. The

board is proposing procedures and criteria which will satisfy the terms of House Bill 282 and which will meet, but not exceed, the criteria required for accreditation by either the Liaison Committee on Graduate Medical Education or the American Osteopathic Association.

Applications for grants will be accepted, pending final adoption of rules by the Coordinating Board.

The staff of the Coordinating Board has determined that there are no fiscal implications for the state or any unit of local government that would result from these rules.

Public comment on the proposed adoption of Rule 251.03.05.001-.009 is invited. Comments may be submitted by telephoning the Coordinating Board at (512) 475-4361, or by writing the Coordinating Board at P.O. Box 12788, Austin, Texas 78711.

The adoption of Rules 251.03.05.001-.009 is proposed under the authority of Section 61.501-504, Texas Education Code.

**.001. Types of Grants.** Medical schools, licensed hospitals, or nonprofit corporations may apply for a Phase I Planning Grant, a Phase II Planning Grant, a Phase I Operational Grant, or a Phase II Operational Grant.

(a) A Phase I Planning Grant is defined as a one-time only grant, for no more than six months after the funds are awarded to support planning costs, limited to initial efforts to begin the accreditation process, prior to the hiring of a program director.

(b) A Phase II Planning Grant is defined as a grant to support planning costs after a program director has been employed. Such costs may include salaries for a director and a secretary, accreditation costs, travel, administrative office space, recruitment of faculty and residents, and consultation fees.

(c) A Phase I Operational Grant is defined as a grant to support development of a program after accreditation has been received through the first year of actual resident training in the program.

(d) A Phase II Operational Grant is defined as a grant to support an ongoing program after its first year of operation, including the support of expansion of resident positions.

**.002. Procedures for Requesting Phase I Planning Grant.** A medical school, licensed hospital, or nonprofit corporation requesting a Phase I Planning Grant must:

(1) have submitted a letter of intent for the development of a family practice residency program to the Liaison Committee on Graduate Medical Education (LCGME) or to the American Osteopathic Association (AOA);

(2) show evidence of local community support;

(3) show evidence of support from the appropriate hospital boards, administrators, staff, local physicians, and medical societies;

(4) submit a statement outlining and supporting the need for planning funds;

(5) submit a statement showing evidence of the ability of the applicant to conform to the criteria for a family practice residency program as established by the Coordinating Board.

**.003. Procedures for Requesting Phase II Planning Grant.**

A medical school, licensed hospital, or nonprofit corporation requesting a Phase II Planning Grant must:

(1) show evidence that Phase I Planning as defined above has been completed;

(2) show evidence that a program director, full-time or part-time, has been identified to prepare the application for accreditation to the LCGME or to the AOA;

(3) submit a statement outlining and supporting the need for planning funds;

(4) affirm that the accreditation application will be completed within no more than a six-month period;

(5) agree to submit progress reports on the preparation of the application as required by the Coordinating Board.

**.004. Procedures for Requesting Phase I Operational Grant.** A medical school, licensed hospital, or nonprofit corporation requesting a Phase I Operational Grant must:

(1) be accredited by the LCGME or the AOA;

(2) meet the Coordinating Board criteria for Phases I and II Planning Grants;

(3) document expenditures and revenue to substantiate funding needs;

(4) have scheduled the first enrollment of residents;

(5) submit progress reports on the training program to the Coordinating Board every six months.

**.005. Procedures for Requesting Phase II Operational Grant.** A medical school, licensed hospital, or nonprofit corporation requesting a Phase II Operational Grant must:

(1) be accredited by the LCGME or the AOA;

(2) meet the Coordinating Board criteria for planning grants;

(3) give evidence that the program has been operational for one or more academic years;

(4) give evidence of continuing local support;

(5) document expenditures and revenue to substantiate funding needs;

(6) submit progress reports on the training program to the Coordinating Board on an annual basis.

**.006. Plans Required to Accompany All Grant Requests.** Requests for Phase I and II Planning Grants and Phase I and II Operational Grants must be accompanied by:

(1) a well-developed plan to encourage residents to enter practice in underserved areas of the State of Texas;

(2) a plan to recruit residents in such a way that they are likely to choose a practice site in underserved areas.

**.007. Review of Applications.** Applications for all planning or operational grants shall be reviewed by the Family Practice Residency Advisory Committee to determine the feasibility and viability of the family practice residency program. Proposed programs must be determined to serve the needs of the State of Texas in improving the distribution of health care delivery in the state.

**.008. Amount of Grant.** The amount of funds to be allocated for any planning or operational grant shall be determined by the Coordinating Board, after receiving the recommendation of the Family Practice Residency Advisory Committee. Grants shall be used for operating expenditures as defined by generally acceptable accounting procedures, excluding capital expenditures.

**.009. Criteria to Qualify for Grants.** Criteria which must be met in order for a family practice residency program to



qualify for a grant shall be the criteria required for accreditation by the Liaison Committee on Graduate Medical Education or the American Osteopathic Association.

Doc. No. 780568

## Student Services

### Determining Residency Status 251.05.03

The Coordinating Board, Texas College and University System, is proposing to adopt Rule 251.05.03.013, regarding waiver of out-of-state charges for certain students. House Bill 243, passed by the 65th Legislature, amended Section 130.003(b)(4) of the Texas Education Code to allow the governing board of a public junior college district to waive the difference between the tuition rate for nonresident and resident students without affecting the institution's eligibility to participate in state appropriations for junior colleges and supplementation. The act provides that a person, and his or her dependents, who owns property which is subject to ad valorem taxation by the junior college district, and who is otherwise qualified, is eligible for the exemption if the governing board of the institution has adopted such a policy.

The staff of the Coordinating Board has determined that there are no fiscal implications to the state or to any unit of local government that would result from this rule.

Public comment on the proposed adoption of Rule 251.05.03.013 is invited. Comments may be submitted for a period of 30 days from the date of publication by telephoning the office of the Coordinating Board at (512) 475-4361 or by writing to the Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The adoption of Rule 251.05.03.013 is proposed under the authority of Section 54.053, Vernon's Texas Codes Annotated.

#### .013. *Waiver of Nonresident Tuition by Junior Colleges.*

The governing board of a public junior college district may waive the difference in the rate of tuition for nonresident and resident students for a person, or his or her dependents, who owns property which is subject to ad valorem taxation by the junior college district. The person, or his or her dependents, applying for such waiver shall verify property ownership by presentation of an ad valorem tax statement or receipt issued by the tax office of the junior college district; or by presentation of a deed, property closing statement, or other appropriate evidence of ownership of property which is subject to ad valorem taxation by the junior college district.

Doc. No. 780569

### Tuition Equalization Grants Program Eligible Students 251.05.05

The Coordinating Board, Texas College and University System, is proposing to amend Rule 251.05.05.005 on eligibility of students for a Tuition Equalization Grant. The amendment is proposed to bring the program into compliance with new federal requirements in the State Student Incentive Grants Program concerning student eligibility. It adds to the eligibility criteria that a student be maintaining satisfactory

progress in his or her course, not owe a refund on a B.E.O.G. or S.S.I.G. grant, and not be in default on a federally insured student loan.

The staff of the Coordinating Board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment of Rule 251.05.05.005 is invited. Comments may be submitted for a period of 30 days from the date of publication by telephoning the office of the Coordinating Board at (512) 4361 or by writing to the Coordinating Board at P.O. Box 12788, Austin, Texas 78711.

The amendment of Rule 251.05.05.005 is proposed under the authority of Section 61.221-29, Vernon's Texas Codes Annotated.

#### .005. *Eligible Students.*

(a) To be eligible for a tuition equalization grant, a person must:

(1) be a Texas resident as defined by the board; provided, however, the person must meet, at a minimum, the resident requirements as defined by law for Texas resident tuition in fully state-supported institutions of higher education;

(2) be enrolled as a full-time student in a program other than a theological or religion degree program in an approved college or university;

(3) be required to pay more tuition than is required at a public college or university;

(4) establish financial need in accordance with the following procedures:

(A) Financial resources available to the applicant. Financial resources available to the applicant shall be determined by an analysis prepared by the College Scholarship Service or the American College Testing Program which the applicant submits, or by another similar method as described on the application.

(B) Reasonable expenses for a student. Reasonable expenses for a student at an approved institution shall be determined by the commissioner after consultation with representatives of the approved institution. Lists of reasonable expenses for typical students shall be submitted to the commissioner by the approved institution prior to April 1 of each year for use in the following summer session and in the following academic year. The lists shall follow the formats outlined in Rules .010 and .011 of these rules. Each approved institution may submit as many lists of reasonable expenses as is required to properly reflect the different typical expense categories of students attending the approved institution. When more than one list is submitted, each list should be labeled so as to identify the category of students to be served by that list. In completing individual applications, the amount of "reasonable expenses" must be adjusted downward from those listed for a typical student when necessary to reflect the circumstances of the applicant. If the amount listed for a typical student must be increased to properly reflect the reasonable expenses of an individual applicant, then justification for the increased amount must accompany the individual application with such increased amount subject to approval or disapproval by the commissioner.

(C) Determination of financial need. Financial need can be determined to exist only when the amount of

reasonable expenses of a student is more than the amount of financial resources available to the applicant;

(5) not be a recipient of any form of athletic scholarship;

(6) have completed a student application for a grant on a form prescribed by the board;

(7) have complied with other requirements adopted by the board under the act; and

(8) affirm eligibility for the grant at the time of disbursement by signing the Student Affirmation form; [outlined in Rule .012 of these rules.]

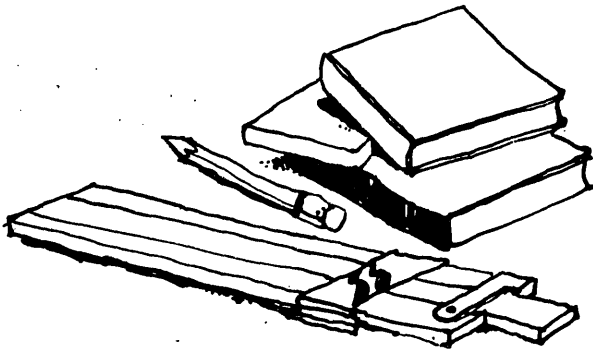
(9) *be maintaining satisfactory progress in his or her course of study;*

(10) *not owe a refund on a grant received under the Basic Educational Opportunity Grant, Supplemental Educational Opportunity Grant, or State Student Incentive Grant Programs; and*

(11) *not be in default on a loan made, insured, or guaranteed under the National Direct Student Loan, Hinson-Hazlewood College Student Loan, or Guaranteed Student Loan Program.*

(b) Limitations of eligible students. The act applies to freshmen (first year) students beginning in the fall semester of 1971; to freshmen and sophomores in 1972; to freshmen, sophomores, and juniors in 1973; and to all students attending approved institutions in 1974 and thereafter. A student enrolled in a theological or religion degree program shall not be eligible for a grant.

Doc. No. 780570



## Texas Public Education Grants Program Eligible Students 251.05.07

The Coordinating Board, Texas College and University System, is proposing to amend Rule 251.05.07.007 on eligibility of students for a Texas Public Educational-State Student Incentive Grant. The amendment is proposed to bring the program into compliance with new federal requirements in the State Student Incentive Grants Program concerning student eligibility. It adds to the eligibility criteria that a student be maintaining satisfactory progress in his or her courses, not owe a refund on a B.E.O.G. or S.S.I.G. grant, and not be in default on a federally insured student loan.

The staff of the Coordinating Board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment of Rule 251.05.07.007 is invited. Comments may be submitted for a period of 30 days from the date of publication by telephoning the office of the Coordinating Board at (512) 475-4361 or by writing to the Coordinating Board at P.O. Box 12788, Austin, Texas 78711.

The amendment of Rule 251.05.07.007 is proposed under the authority of Section 56.031-38, Vernon's Texas Codes Annotated.

**.007. Eligible Students.** To be eligible for a Texas Public Educational-State Student Incentive Grant, a person must:

(1) be a citizen, a national or a permanent resident of the United States and otherwise eligible to pay Texas resident tuition in a fully state-supported institution of higher education, except that awards may be made to nonresident students in an amount not to exceed 10 percent of the total awards made to students at an institution from funds set aside for use as Texas Public Educational Grants;

(2) be enrolled as a full-time, pre-baccalaureate student in an approved institution;

(3) have substantial financial need of not less than \$90 for the academic year;

(4) establish financial need in accordance with the following procedures:

(A) Financial resources available to the applicant. Financial resources available to the applicant shall be determined by an analysis prepared by the College Scholarship Service or the American College Testing Program which the applicant submits, or by another similar method as described on the application.

(B) Reasonable expenses for a student. Reasonable expenses for a student at an approved institution shall be determined by the commissioner after consultation with the representatives of the approved institution. Lists of reasonable expenses for typical students shall be submitted to the commissioner by the approved institution prior to April 1 of each year for use in the following academic year. The lists shall follow the format outlined in Rule .011 of these rules. Each approved institution may submit as many lists of reasonable expenses as is required to properly reflect the different typical expense categories of students attending the approved institution. When more than one list is submitted, each list must be labeled so as to identify the category of students to be served by that list. In completing individual applications, the amount of "reasonable expenses" must be adjusted downward from those listed for a typical student when necessary to reflect the circumstances of the applicant. If the amount listed for a typical student must be increased to properly reflect the reasonable expenses of an individual applicant, then justification for the increased amount must accompany the individual application, with such increased amount subject to approval or disapproval by the commissioner.

(C) Determination of financial need. Financial need can be determined to exist only when the amount of reasonable expenses of a student is more than the amount of financial resources available to the applicant.

(5) have completed a student application for a grant on a form prescribed by the board;

(6) have complied with other requirements adopted by the board under the act; [and]

(7) affirm eligibility for the grant at the time of disbursement by signing the Student Affirmation form; [outlined in Rule .012 of these rules.]

(8) *be maintaining satisfactory progress in his or her course of study;*

(9) *not owe a refund on a grant received under the Basic Educational Opportunity Grant or State Student Incentive Grant Programs; and*

(10) *not be in default on a loan made, insured, or guaranteed under the National Direct Student Loan, Hinson-Hazlewood College Student Loan, or Guaranteed Student Loan Program.*

Issued in Austin, Texas on January 20, 1978.

Doc. No. 780571      Kenneth H. Ashworth  
Commissioner of Higher Education

Proposed Date of Adoption: March 10, 1978

For further information, please call (512) 475-4361.

## Texas Health Facilities Commission

(Editor's note: The following proposed rules represent the last of several parts being run serially; the first set of proposals appeared in the January 20, 1978, issue. The proposed date of adoption for all the rules is March 1, 1978.)

The Texas Health Facilities Commission proposes to adopt new rules to replace its existing rules. These new rules are designed to provide a more efficient and orderly certificate of need process for the regulation of development, expansion, or modification of health care facilities or services in the State of Texas. The proposed rules will allow the commission to comply, as mandated by Article 4418(h), Texas Civil Statutes, with new federal regulations promulgated under the National Health Planning and Resources Development Act of 1974, Public Law 93-641 (42 United States Code 300K).

The proposed rules are expected to have no fiscal implications on units of local government, but may have implications for the State of Texas through revenue spent in funds appropriated for the enforcement of Article 4418(h), Texas Civil Statutes, pursuant to the provisions of Public Law 93-641.

During year one, costs to the state are estimated to increase revenue requirements by approximately \$275,000. This increase will be incurred because of an increased volume of applications and the requisite administrative and legal matters, as well as enforcement activities prescribed under the act.

During years two through five, best estimates for additional revenues required, as a result of these rules and federal regulatory requirements, are for expenditures of approximately \$50,000 additional each year.

The source of determination that the proposed rules will have fiscal implications for the State of Texas and no fiscal implications for units of local government is the staff of the commission.

Public comment is invited and will be accepted until February 24, 1978. Written comment should be addressed to William D. Darling, General Counsel, Texas Health Facilities Commission, P.O. Box 15023, Austin, Texas 78761.

A public hearing, material to the adoption of these rules, will be held on February 17, 1978, at 10 a.m. at the offices of the Texas Health Facilities Commission, 1600 West 38th Street, Suite 305, Jefferson Building, Austin, Texas.

## Commission Action on Applications Orders of the Commission 315.21.01

The rules in this subchapter explain how the commission takes action on applications and related pertinent matters post-hearing.

These rules are proposed under the authority of Sections 1.04, 2.06(2) and (3), 3.02(b), 3.02(d), 3.06(b), 3.09(c), 3.11, and 3.13(a) of Article 4418(h), Texas Civil Statutes.

**.010. Record of Proceedings.** After the hearing, the hearing officer shall prepare a complete record of the proceedings on an application. The record must include at least the following:

- (a) pleadings and motions (including application and request to become a party);
- (b) the written or recorded transcript of the hearing;
- (c) evidence received or considered;
- (d) a statement of matters officially noticed;
- (e) objections and rulings thereon;
- (f) staff memoranda or data submitted to or considered by the hearing officer or the commission in connection with the hearing;
- (g) written comments filed by a health systems agency on a certificate of need application; and
- (h) the recommendation of the hearing officer.

When the record is complete, the hearing officer shall forward the record to the commissioners for review.

**.020. Consideration of Recommendations and Comments.** The commissioners shall consider the recommendation of the hearing officer prior to ruling on an application. Prior to ruling on an application for a certificate of need, the commissioners shall consider the written comments of the health systems agency. When the appropriate health systems agency fails to present comments by the 45th day after the acceptance of a certificate of need application, the commission may not consider the comments without written agreement of the parties to the application.

**.030. Commission Meeting.** The commission shall rule by the vote of the commissioners on applications or other matters in open meeting. The commission shall rule on applications after the hearing on the application or after waiver of the hearing pursuant to these rules.

**.040. Oral Argument.** Any person may submit a written request for oral argument before the commission prior to the final determination on any matter properly before the commission. Oral arguments shall be allowed only in the discretion of the chairman. A person shall limit argument before the commission to evidence of record in the matter under consideration.

**.050. Ruling Postponement.** A person may request that the chairman postpone ruling on application or other matter scheduled for open meeting by filing a written motion with the commission. The motion must be filed at least 24 hours prior to the open meeting at which the commission is scheduled to consider the application or other matter. The chairman may postpone a ruling on an application upon the proper filing of a motion to postpone a ruling.

**.060. Quorum.** The commission shall not transact business in an open meeting with less than two commissioners present.

**.070. Commission Vote.** A motion of a commissioner regarding an application or other matters before the commission in an open meeting must receive the votes of two commissioners to be ordered. Failure of a commissioner to obtain the votes of two commissioners on his motion shall result in a denial of the motion.

**.080. Certificate of Need Order.** The commission shall either grant or deny an application for certificate of need by written order not later than 90 days following the dating of the application unless:

- (a) a later date is agreed upon in writing by the applicant, parties, and the commission; or
- (b) the hearing date has been delayed pursuant to commission rules and the act.

When granting a certificate of need, the commission shall issue a certificate of need setting forth an affirmative finding that the proposed project satisfies the criteria established by the commission. When denying a certificate of need application, the commission shall issue an administrative order.

**.090. Exemption Certificate Orders.** The commission shall either grant or deny an application for an exemption certificate by written order not later than 60 days following the hearing on the application or 60 days following the waiver of hearing on the application pursuant to commission rules, unless a later date is agreed upon by the applicant, parties, and commission. In granting an exemption certificate application, the commission shall issue an exemption certificate order. In denying an exemption certificate application, the commission may issue a declaratory ruling finding that the subject project requires a certificate of need or an administrative order.

**.100. Extension and Transfer Orders.** The commission shall either grant or deny an application for an extension of an exemption certificate or transfer of ownership of an exemption certificate or certificate of need by issuing a written administrative order not later than 60 days following the hearing on the application or 60 days following waiver of the hearing on the application pursuant to commission rules unless a later date is agreed upon by the applicant, parties, and commission.

**.110. Declaratory Ruling Order.** The commission shall issue a declaratory ruling by written order not later than 60 days following the hearing on an application for a declaratory ruling or within 60 days following the waiver of hearing on an application for declaratory ruling pursuant to commission rules unless a later date is agreed upon by the applicant, parties, and the commission.

**.120. Contents of Orders.** A written order of the commission on an application or other matter must include findings of fact and conclusions of law separately stated. Findings of fact when set forth in statutory language must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. The commission may conditionally issue orders granting applications for certificate of need or exemption certificate. A written order of the commission is issued when the order is signed by the commissioners.

**.130. Periodic Reports by Certificate Holder.** A holder of a certificate of need must submit once every 180 days from the date the certificate of need order is issued until the project authorized by the certificate of need is completed or abandoned, reports to the commission regarding the status of the project authorized by the certificate of need. The status report shall be due by 5 p.m. on the 180th day of every reporting period. This rule shall constitute a condition of certificate of need orders of the commission. Each certificate of need order will include as a condition the provisions of this rule.

**.140. Persons Entitled to Copies of Orders.** The commission shall forward copies of a certificate of need order, exemption certificate order, administrative order, or declaratory ruling order to the applicant and parties. The commission shall forward copies of orders relating to certificate of need application to the appropriate health systems agency. Any person may, pursuant to these rules, request a copy of a written order of the commission. The commission shall upon proper written request forward a copy of an order to the person making the request.

**.150. Requests for Reconsideration.** Any person may request the commission to reconsider its decision in an exemption certificate, declaratory ruling, or certificate of need order or administrative order within 15 days after it is issued. The petition must be in writing and filed by 5 p.m. on the 15th day after the order that is the subject of the petition was issued. The petition must contain at least the following information:

- (a) the name and address of the persons submitting the petition;
- (b) the identity of the order for which reconsideration is requested; and
- (c) the reasons that the order should be reconsidered.

The petition may include a request that a rehearing on the application that was the subject of the order be conducted. When a petition includes a request for a rehearing, the reasons for the rehearing must be stated in the petition.

**.160. Reconsideration of Commission Orders.** The commission may reconsider an exemption certificate, declaratory ruling, or certificate of need order or administrative order within 15 days after it is issued on its own motion or on the written petition of any person. Upon reconsideration, the commission may modify, affirm, or reverse the order that is the subject of the reconsideration. The commission on reconsideration of an order upon a finding of good cause may require a rehearing on the application that is the subject of the order being reconsidered. The failure of the commission to reconsider an order for which a petition was filed pursuant to this subchapter by the 15th day after the order was issued shall result in a denial of the petition. When a motion for rehearing is filed pursuant to this subchapter, the commission may consider the petition in rendering a decision on the motion for rehearing.

**.170. Motion for Rehearing.** An applicant or party to an application that was the subject of an exemption certificate, declaratory ruling, or certificate of need order or administrative order may file a motion for rehearing with the commission within 15 days after the issuance of the written order by the commission. The motion must be filed by 5 p.m. on the 15th day after the order that is the subject of the motion was issued. Replies to a motion for a rehearing by an applicant or party must be filed with the commission within 25 days after the issuance of the order that is the subject of the motion was issued.

**.180. Commission Action on Motions for Rehearing.** The commission must take action on a motion for rehearing within 45 days after the order that is the subject of the motion was issued. When the commission fails to act on a motion for rehearing within 45 days after the order is issued, the motion is considered to be denied by operation of law. The commission may grant a motion for rehearing on an application that is the subject of an exemption certificate, declaratory ruling, or certificate of need order or administrative order on a showing of good cause.

**.190. Good Cause for Rehearing.** The commission shall consider a request or motion for rehearing to have shown good cause when the motion or request:

(a) presents significant relevant information not previously considered by the Texas Health Facilities Commission in its review of the application that is the subject of the order;

(b) demonstrates that there have been significant changes and factors or circumstances relied upon by the Texas Health Facilities Commission in reaching its decision on the application that is the subject of the order;

(c) demonstrates that the Texas Health Facilities Commission has materially failed to follow its adopted procedures in reaching its decision on an application that is the subject of an order; or

(d) provides such other bases for a public hearing as the Texas Health Facilities Commission determines it constitutes good cause.

**.200. Written Notice of Rehearing.** When the commission determines that a rehearing should be conducted on an application that is the subject of an exemption certificate, declaratory ruling, or certificate of need order or an administrative order, the commission shall provide the parties, interested parties, and petitioners for reconsideration at least 10 days' written notice of the rehearing. When the HSA was not a party in a prior hearing, the commission shall also provide written notice of the rehearing to the HSA.

**.210. Failure to File a Motion for Rehearing.** An order of the commission shall become final and is not appealable on the failure of the applicant or parties to file a motion for rehearing within 15 days after the order is issued.

**.220. Final Order.** A written order of the commission that has been issued is final or dated when the order is no longer appealable.

**.230. Commencement of Development.** Development of a project may commence only on a granting of a certificate of need, exemption certificate, or declaratory ruling that finds that an exemption certificate or declaratory ruling is not necessary for development.

**.240. Report to HSA.** When the commission issues a written order granting or denying a certificate of need application and the commission determines that the order is not consistent with the goals of the applicable health systems plan or the priorities of the applicable annual implementation plan, the commission shall submit a written report detailing the reasons for the inconsistencies of the commission order to the appropriate health systems agency.

**.250. Commencement of Time Limits.** A time limit imposed by an order that has been issued by the Texas Health Facilities Commission shall commence when the order is no longer appealable.

Doc. No. 780309

## Judicial Review 315.21.02

The rules in this subchapter explain how an applicant or parties may seek judicial review of commission actions on applications.

These rules are proposed under the authority of Sections 1.04, 2.06(2), 3.02(e), 3.03, and 3.15 of Article 4418(h), Texas Civil Statutes.

**.010. Certificate of Need.** As provided in Section 3.15 of the act, "an applicant or party who is aggrieved by an order of the Commission granting or denying a Certificate of Need is entitled to judicial review under the substantial evidence rule." A petition for judicial review shall be filed as provided in Section 19 of the Administrative Procedure and Texas Register Act.

**.020. Exemption Certificate Under Section 3.02 of the Act.** As provided in Section 3.02(e) of the act, "If the application for an Exemption Certificate is denied, the applicant may apply for a Certificate of Need, and if the application for a Certificate of Need is denied, the applicant may raise in proceedings for judicial review as provided by the Act any error of the Commission in denying the Exemption Certificate." A petition for judicial review shall be filed as provided in Section 19 of the Administrative Procedure and Texas Register Act.

**.030. Declaratory Ruling.** As provided in Section 3.03 of the act, "If the Commission rules that a Certificate of Need or an Exemption Certificate is required, the applicant may apply for an Exemption Certificate or a Certificate of Need and may seek judicial review of the Declaratory Ruling only in proceedings to review the denial of a Certificate of Need as provided by this Act." A petition for judicial review shall be filed as provided in Section 19 of the Administrative Procedure and Texas Register Act.

**.040. Exemption Certificate Under Section 6.02 of the Act.** Pursuant to Section 6.02(c) of the act, the commission states that if the application under 6.02 is denied, the applicant may apply for a certificate of need, and if the application for a certificate of need is denied, the applicant may raise in proceedings for judicial review as provided by this act any error of the commission in denying the exemption certificate under 6.02 of the act. A petition for judicial review shall be filed as provided in Section 19 of the Administrative Procedure and Texas Register Act.

Doc. No. 780310

## Forfeiture 315.21.03

The rules in this subchapter explain procedures governing forfeiture of certificates, orders, and rulings.

These rules are proposed under the authority of Sections 2.06(2), 3.02(d), and 3.13 of Article 4418(h), Texas Civil Statutes.

**.010. Automatic Forfeiture.** A certificate of need is subject to automatic forfeiture for failure of the certificate holder to begin development within 180 days after the date of the certificate of need order.

**.020. Initiation of Forfeiture Proceedings.** The commission, upon its own motion or at the request of any person, may initiate forfeiture proceedings for a certificate, order, or ruling. When it is determined that forfeiture proceedings should be initiated, the commission shall schedule a hearing and issue a written order directing the named party to appear at the hearing and show cause why the certificate, order, or ruling should not be forfeited. The commission shall publish a notice of forfeiture hearing in the *Texas Register*.

**.030. Review of Evidence Received at Forfeiture Hearing.** After review of the evidence received at the forfeiture hearing, the commission may find that the certificate, order, or ruling has been forfeited if the commission determines that:

(a) a certificate holder has failed to proceed with reasonable diligence toward development and completion of a project; or

(b) a certificate holder has attempted to transfer or convey or has transferred or conveyed more than a two percent interest in the certificate of need or exemption certificate without prior written approval from the commission; or

(c) a certificate holder has attempted to transfer or convey or has transferred or conveyed more than a two percent interest in a certificate holder without prior written approval from the commission;

(d) a certificate holder has failed to comply with conditions set out in the certificate of need, exemption certificate, or declaratory ruling order.

**.040. Written Order on Forfeiture.** Upon a finding of forfeiture, the commission shall issue a written order setting forth its decision and the findings of fact supporting the decision.

Doc. No. 780311

**.020. Violation Reporting.** A person may report an alleged violation of Article 4418(h), Vernon's Annotated Civil Statutes, the Health Planning and Development Act, or the rules of the commission by filing a sworn written complaint with the commission.

**.030. Violation Complaint.** The sworn written complaint of an alleged violation must set forth the name and address of the alleged violating party, as well as facts and circumstances sufficient to acquaint the commission with the alleged violation. The person is not required to submit a fee with a written sworn complaint.

**.040. Commission Action on Complaint.** The commission shall, within a reasonable period of time, notify the alleged violator of the complaint. The commission may request a written sworn response to the complaint from the alleged violator.

**.050. Show Cause Hearing.** The commission may, on its own motion or upon review of a sworn complaint and sworn response to the complaint, if any, order a show cause hearing to receive evidence relevant to the existence or nonexistence of violation of the act and the rules of the commission. The commission shall issue a written order directing the alleged violator to appear at a specific time, date, and place, and show cause why he should not be found in violation of the act, and/or commission rules. The written order shall identify the alleged violation.

**.060. Parties to Show Cause Hearings.** A person filing a complaint that is the subject of the show cause hearing shall be treated as an interested person and have the right to present evidence at the show cause hearing. The complainant shall not have the rights of a party.

**.070. Public Notice of Show Cause Hearing.** The commission shall publish in the *Texas Register* a notice of the show cause hearing.

**.080. Commission Action.** The commission may find, after review of the evidence received at the show cause hearing, that a violation of the act, and/or the commission rules has occurred. (Upon a finding of a violation, the commission shall issue a cease and desist order.) Upon finding a violation of the act, the commission may request the attorney general to institute legal action to enjoin the violation.

Doc. No. 780312

## Enforcement

### Violation of the Act 315.22.01

The rules in this subchapter explain violation of the act and those procedures through which the commission may pursue a violation.

These rules are proposed under the authority of Section 2.06(2), 3.12, and 3.14 of Article 4418(h), Texas Civil Statutes.

**.010. Violation Defined.** A person who initiates the development of a project without having a required certificate of need or an exemption certificate is in violation of the act.

### Province of Enforcement 315.22.02

The rules in this subchapter describe those prohibitions against assisting violators and legal action available to the commission for violations.

These rules are proposed under the authority of Section 2.06(2), 3.12, and 3.14 of Article 4418(h), Texas Civil Statutes.

**.010. Injunctive Relief.** The attorney general may upon request of the commission institute a legal action to enjoin violation of this act.

**.020. Agency Assistance to Violators Prohibited.** No agency of the state or any of its political subdivisions may appropriate or grant funds or assist in any way a person, appli-



cant, facility, or certificate holder who is or whose project is in violation of this act.

*.030. Licensure of Violators Prohibited.* No permit to build or license to operate a facility or license to provide a service may be issued for a project or to a person in violation of this act, by the state or a political subdivision or instrumentality of the state.

Doc. No. 780313

## Miscellaneous Provisions

### Time Periods 315.23.01

The rule in this subchapter explains computation of time periods for purposes of administering the provisions of the act.

This rule is proposed under the authority of Section 2.06(2) of Article 4418(h), Texas Civil Statutes.

*.010. Computing Time Periods.* A time period established by commission rule or commission order shall begin on the first day after the event which invokes the time period. When the last day of the period falls on a Saturday, Sunday, state, or federal holiday, the period shall be extended to the next day which is not a Saturday, Sunday, state, or federal holiday. The time period shall expire at 5 p.m. of the last day of the computed period.

Doc. No. 780314

### Records of the Commission 315.23.02

The rules in this subchapter explain how requests for records and for confidentiality of documents may be received for commission processing. Costs for duplications are also described.

These rules are proposed under the authority of Sections 2.06(2) and 3.11 of Article 4418(h), Texas Civil Statutes.

*.010. Open Records.* All information collected, assembled, or maintained by the Texas Health Facilities Commission in connection with its transaction of official business is public information and available for public inspection and disclosure during normal business hours. An application and a request to become a party are public information and subject to public inspection and disclosure.

*.020. Request for Confidentiality.* A person who submits an application or request to become a party may request the commission to consider a portion or portions of the document or documents submitted to be confidential and thus exempt from public inspection and disclosure under Section 3(a) of the Open Records Act, Article 6252-17a, Vernon's Annotated Civil Statutes. Such request must identify the section or sections of the document or documents that are to be considered confidential. The request must include a written brief which presents factual and legal argument in support of exemption from public disclosure. An application or request to become a party which is submitted without a request for exemption from disclosure and without a written brief shall be considered, in all parts, open to public inspection. The chairman of the commission shall determine, upon examination of the written request and written brief, what section or sections of

the document or documents submitted will be considered confidential and exempt from public inspection and disclosure. When required by the provisions of the Open Records Act, Article 6252-17a, Vernon's Annotated Civil Statutes, the chairman shall request an opinion from the Texas attorney general. The chairman of the commission will notify the person who has requested confidentiality of his decision within seven days after the submission of the request.

*.030. Requests for Inspection of Records.* A request to view copy of commission records must be made with reasonable prior notice in writing. A person requesting to view commission records must establish proper identification. The custodian of the records, the chairman of the Texas Health Facilities Commission, will upon written request produce information for inspection or duplication. If a record requested is in storage, the custodian shall notify the requesting party in writing and shall set an hour and date when the record will be available. No person shall remove an original record from the offices of the Texas Health Facilities Commission without prior written approval of the custodian of the records.

(a) The chairman, the chief administrative officer of the Texas Health Facilities Commission, is the custodian of the records of the Texas Health Facilities Commission.

(b) Any expense incurred in the reproduction, preparation, or retrieval of records shall be paid by the person requesting the record. The charge of such reproduction, preparation, and retrieval shall be in accord with the maximum charge established by the State Board of Control. The maximum charge for the first letter-size or legal-size copy of a document is 55 cents. The maximum charge for subsequent copies of the same document or of succeeding pages of said document is 15 cents per page. The commission may charge a lesser amount when the cost of reproducing said document or documents is less than the maximum charge established by the State Board of Control. The commission may, upon request, mail reproduced records to any person who so requests. If the commission mails said records, a charge for postage may be included in the charge for reproduction. The charge for reproduction of a document must include state and local sales taxes of five percent. Postage is not subject to state and local sales tax. (Reference: Sales Tax Bulletin No. 5—Revised, Comptroller of Public Accounts.)

Doc. No. 780315

### Interagency Contracts and Funds 315.23.03

The rules in this subchapter explain commission rights to receive funds for duties in administering the act.

These rules are proposed under the authority of Sections 2.06(2), 1.06, and 2.01 of Article 4418(h), Texas Civil Statutes.

*.010. Interagency Cooperation.* For the purpose of instituting and carrying out commission functions, pursuant to Section 1.06 of the act, the commission will from time to time request information and assistance from those state agencies having functions relevant to commission matters. Further, and in accord with Section 2.01 of the act, the Texas Department of Health and the commission shall coordinate administrative responsibilities in order to avoid unnecessary duplication of facilities and services.

**.020. Contracts and Receipts of Funds for Duties and Functions.** For the purpose of carrying out its duties and functions, the commission may apply for, contract for, receive, and expend any appropriations or grants from the state, the federal government, or any other public source, subject to any limitations and conditions prescribed by legislative appropriation.

Doc. No. 780316

## Annual Report of Commission 315.23.04

The rule in this subchapter describes the annual commission report.

This rule is proposed under the authority of Section 2.06(2) and 2.06(4) of Article 4418(h), Texas Civil Statutes.

**.010. Preparation and Submission.** The commission will prepare and submit an annual report to the governor and the legislature, as prescribed in Section 2.06(4) of the act. The annual report will describe the commission's purpose, duties, and previous year's activities, which will include a financial statement.

Doc. No. 780318

## Commission Publications 315.23.05

The rules in this subchapter describe various commission publications and the respective costs.

These rules are proposed under the authority of Section 2.06(2) of Article 4418(h), Texas Civil Statutes.

**.010. Weekly Mail Out.** The commission shall prepare a weekly publication detailing commission activity for mail circulation to subscribers.

**.020. Subscription Fees for Mail Out.** The annual subscription fee for the weekly mailing which contains an account of commission activity will be set according to prevailing duplication and postage rates. Subscription charges shall be accrued as of the first day of the month during which the fee is received and thereafter for a period of 12 months. All payment of fees and charges are to be made by check or money order. Subscription copies will be mailed beginning with the next regular mailing.

**.030. Report of Applications Review.** The commission at least once annually shall prepare a report of the reviews of exemption certificate, declaratory ruling, and certificate of need applications being conducted, and a report of the reviews of exemption certificate, declaratory ruling, and certificate of need applications completed by the commission. The report shall contain a general statement of the findings and decisions made in the course of the exemption certificate, declaratory ruling, and certificate of need application review process.

**.040. Fee for Report of Applications Review.** Any person may request a copy of the report of application reviews from the commission. The fee for a copy of the report of application reviews will be set according to prevailing duplication rates and postage rates. Payment of fees and charges are to be made by check or money order.

Doc. No. 780317

## Health Systems Agency Rules of Review

### Purpose and Definitions 315.24.01

The rules in this subchapter explain the purpose for health systems agency review and the definitions in effect for health systems agency reviews.

These rules are proposed under the authority of Sections 2.06(2) and 3.08 of Article 4418(h), Texas Civil Statutes.

**.010. Purpose.** Section 3.08 of the act provides that a health systems agency (HSA) review of a certificate of need application must be conducted according to the rules promulgated by the commission. These rules are set forth to enable the orderly and effective receipt and review of written comments transmitted to the commission not later than the 45th day after a certificate of need application is dated.

**.020. Definitions.** The definitions set forth in commission rules will be applicable to the HSA rules of review.

Doc. No. 780319

### Application Review by Health Systems Agency 315.24.02

The rules in this subchapter describe the review procedures of a certificate of need application by a health systems agency.

These rules are proposed under the authority of Sections 2.06(2) and 3.08 of Article 4418(h), Texas Civil Statutes.

**.010. Schedule for Review.** Upon receipt from the applicant of an application for a certificate of need, the health systems agency (HSA) shall determine whether to conduct a review. The HSA shall mail written notification of its intention to conduct a certificate of need review to the applicant, the Texas Health Facilities Commission, and all other persons as provided by law.

**.020. Public Hearing.** A public hearing must be held by the HSA when a request is timely filed with the HSA as provided by law. Hearings must be conducted by not less than three members of the governing body. A staff member or a person not a staff member may be appointed to conduct the hearing in the presence of the requisite members of the governing body. The three members of the governing body shall:

- (a) keep and maintain a complete record of the hearing;
- (b) insure that all testimony is given under oath;
- (c) afford persons present at the public hearing a reasonable opportunity to ask questions of any person, including the HSA, that presents evidence at the hearing; and
- (d) prepare proposed written comments which contain specific proposed findings of fact that shall be presented to the governing body (or if designated, the executive committee or a review committee composed of at least 50 percent of the governing body membership).

Doc. No. 780320

## Written Comments of Health Systems Agency 315.24.03

The rules in this subchapter explain the procedures for submitting written comments on health systems agency application reviews.

These rules are proposed under the authority of Sections 2.06(2) and 3.08 of Article 4418(h), Texas Civil Statutes.

**.010. Procedure.** The health systems agency (HSA) may provide written comments to the commission not later than the 45th day after the dating of the application. Such written comments shall have been adopted at a meeting of the governing body of the HSA (or if designated, the executive committee or a review committee composed of at least 50 percent of the governing body membership).

**.020. Contents.** The written comments must include:

(a) The recommendation to approve or disapprove the proposed project.

(b) Findings which are drawn from facts presented on the application and are identified as to source. A finding of fact shall not be supported by:

(1) unsworn facts;

(2) facts beyond the personal knowledge of the person testifying, or facts upon which a reasonable person would not rely in the conduct of his affairs; and

(3) facts which have not been available to the applicant at the hearing.

(c) Objections and rulings thereon.

(d) Staff memorandum submitted or considered.

(e) Any written comments of the governing board members who have conducted the hearing on the proposed project.

Doc. No. 780321

## Criteria 315.24.04

The rules in this subchapter define the criteria to be used in health systems agency application reviews.

These rules are proposed under the authority of Sections 2.06(2) and 3.08 of Article 4418(h), Texas Civil Statutes.

**.010. Utilization of Commission Criteria.** The health systems agency (HSA) shall utilize the criteria delineated in Section 3.10 of the act and in the commission rules in the review of applications for certificate of need.

**.020. HSA Criteria.** The HSA may promulgate and adopt criteria in addition to that required by the act and the commission rules. The formulation and application of additional criteria shall be consistent with the criteria provided in the act and in the commission rules and shall not be adopted without prior approval of the Texas Health Facilities Commission.

Issued in Austin, Texas, on January 12, 1978.

Doc. No. 780322      Melvin Rowland  
Chairman  
Texas Health Facilities Commission

Proposed Date of Adoption: March 1, 1978

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

## Texas Department of Human Resources

### Food Stamps

#### Security and Accountability 326.15.15

The Texas Department of Human Resources proposes the repeal of its rule about the responsibility of all department employees to maintain security of those forms which provide the means to obtain food coupons in the Food Stamp Program. This rule contains internal procedures, and therefore the department has determined that this rule is no longer necessary.

The department has determined that the proposed repeal will have no fiscal implications for the state or units of local government. This is an internal procedure change which does not have any fiscal implications.

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau—730, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

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

**.001. Security.**

(a) Security is a responsibility of all employees of the department. The safeguarding of food coupons, case records, and case record information is of paramount importance, but security must also be maintained on those forms which provide the means to obtain food coupons, e.g. blank I.D. cards, Authorization to Purchase Card, Manual Authorization to Purchase Card, Certification of Household Transfer, and other authorization forms.

Doc. No. 780584

### Farm Laborers 326.15.57

The Texas Department of Human Resources proposes to amend Section (b) of its rule about the policies for seasonal migrant farm work households to continue participation in the Food Stamp Program when they move to another county or state. The department has revised the forms and procedures for a 60-day continuation of certification to add a provision for transfer of retroactive benefits when a household is moving. This amendment includes the revised forms and procedures for the 60-day continuation of certification.

The department has determined that the proposed amendment will have no fiscal implications for the state or units of local government. The proposed amendment is an improvement in office procedures only.

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau—730, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

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

## .001. Seasonal Migrant Farm Workers.

(b) Seasonal migrant farm work households that enter a county with a valid Certification of *Transfer of Household Benefits* [Transfer] form, for 60-day continuation of certification may elect to participate on the basis of the transfer form, be certified under normal procedures or, if eligible, under the special procedure outlined in Rule 326.15.57.011. Households certified under this special procedure may receive a 60-day continuation of the certification upon leaving the county.

Doc. No. 780585

## Certification Periods 326.15.63

The Department of Human Resources proposes to amend Section (b) of its rule about the policies governing when benefits should be provided to eligible households in the Food Stamp Program. Section (b) of this rule clarifies that the policies do not apply to households presenting a valid form for a 60-day continuation of certification. The department has revised its forms and procedures for a 60-day continuation of certification to add a provision for transfer of retroactive benefits when a household is moving. This amendment includes the revised forms and procedures for the 60-day continuation of certification.

The department has determined that the proposed amendment will have no fiscal implications for the state or units of local government. This is an improvement in office procedures only.

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau—730, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

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

## .002. Establishing the First Month of Issuance.

(b) These procedures do not apply to households presenting a valid Certification of *Transfer of Household Benefits* [Transfer] form.

Doc. No. 780586

## Retroactive Benefits 326.15.72

The Department of Human Resources proposes to amend Sections (f) and (g) of its rule concerning the procedures for authorizing the transfer of retroactive benefits in the Food Stamp Program. The department has revised its forms and procedures for transferring retroactive benefits in order to add the provision for transfer of retroactive benefits to the 60-day continuation of certification procedures. This amendment deletes references to the procedure currently used to certify authorization of the transfer of retroactive benefits and adds the new procedures.

The department has determined that the proposed amendment will have no fiscal implications for the state or units of local government. This amendment is an improvement in internal procedures only.

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau—730, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

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

## .006. Authorizing Retroactive Benefits.

(f) Retroactive benefits will be made available to households transferring under the *Transfer of Household Benefits Procedures in accordance with the 60-day continuation of certification procedures*. To transfer these entitlements, [a letter under department letterhead identifying the household and] the amount of retroactive benefits *is entered on the Certification of Transfer of Household Benefits form according to the instructions for that form* [due must accompany the certificate of household transfer to the receiving office].

[(g) Upon receipt of the transfer form the worker at the receiving office will acknowledge receipt of the entitlement letter and request verification of the letter's validity. Retroactive benefits will not be provided until the validity of the entitlement letter is verified in writing from the office originating the transfer certificate.]

Doc. No. 780587

## Sixty-Day Continuation 326.15.82.001-.008

The Department of Human Resources proposes to amend its rules about the policies and procedures for certifying households moving to a new county for a 60-day continuation of benefits provided in the Food Stamp Program. The department has revised the forms and procedures for a 60-day continuation of certification in order to add a provision for the transfer of retroactive benefits when a household is moving. Currently, the department requires that the transfer of retroactive benefits be certified in a letter accompanying the certification of household transfer. The amendments to these rules will entitle households to transfer retroactive benefits to a new county whether or not the household transfers the certification and whether or not the household is eligible for continued certification at the time of the move.

The department has determined that the proposed amendments will have no fiscal implications for the state or units of local government. These amendments are improvements in office procedures only.

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau—730, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this *Register*.

## .001. Sixty-Day Continuation of Certification.

(a) The certification of a household moving from one county to another, whether within or between states, will, under certain circumstances, remain valid for a period of 60 days after the date of its move without regard to changes in income or resources. The basis of issuance for the continuation will be the same as the basis of issuance on the date of the move, regardless of future certifications already determined for the household. [Certification workers must ac-

quaint applicants and recipients with this provision at the certification interview and make clear their right to choose between this procedure and certification under normal procedures upon arrival in the new county.]

(b) *An individual's entitlement to retroactive benefits may be transferred to a new county whether or not the household transfers its certification and whether or not the household is eligible for continued certification at the time of the move.*

(c) *The household must be informed of the transfer provisions during its certification interview and again when the worker is notified of the household's intent to move. The household may choose to have its certification transferred or to be certified under regular procedures on arrival in the new county.*

(d)(b) Seasonal migrant farm work households may receive a 60 day continuation of certification under the same conditions as any other household. [The entitlement to retroactive benefits may be transferred in conjunction with the 60-day continuation procedures.]

#### .002. Certification of Transfer of Household Benefits [Transfer] Form.

[(a)] A Certification of *Transfer of Household Benefits* [Transfer] form is [the document] used to *transfer* [continue] *the* [a] household's certification *or its entitlement to retroactive benefits, or both*, from one county or state to another. [Since the form is an extension of certification.] The form provides the household's size and net food stamp income, [and] the time period for which eligibility is *being continued, the balance of retroactive benefits due, and the individual to whom they are due.* [The worker in the new county may then determine the household's proper coupon allotment in the event a household moves during a change in the coupon allotment tables or moves to a state which has a different coupon allotment size. A Collection and Use of Information by the Food and Nutrition Service form must be attached to the transfer form or appropriate information may be read to the household members.]

#### .003. Responsibilities of Losing County.

(a) Upon notification from a household of its intent to move to another county, if the household *wishes* [desires] to *transfer* [continue] its certification *and/or its entitlement to retroactive benefits*, the worker will proceed as follows:

(1) *A household is eligible to retain its certification for 60 days after it moves to another county or state provided:*

(A) *All members of the household will be moving to the new location.*

(B) *The household is eligible and certified on the date of the move and has not already moved.*

(C) *The household is not currently certified under disaster provisions or pending verification.*

(D) *The household is not currently certified under a 60-day continuation of certification* [Determine if the household will be eligible to retain its certification for 60 days after the move has taken place. To determine continued eligibility, the caseworker will ask if all members are moving with the household. If the answer is yes and the household is certified as eligible on the anticipated date of departure, the household will be considered eligible to retain its certification. Households will not be eligible if the current certification is under disaster eligibility standards, the preliminary certification provisions for emergency zero purchase, or a 60-

day continuation] (except for the balance of such a period, as provided in Rule 326.15.82.007).

(2) If the household has *already redeemed* [received] its ATP's [full coupon allotment] for the month *it moves* [in which the move takes place], the [certification] worker *authorizes* [shall authorize] a full [coupon] allotment for the two months *following* [subsequent to] the move. If the household *has not redeemed its ATP's for the month of* [wishes to participate in the gaining county in the same month as] the move, *and if* [any] unused ATP's *are* [must be] surrendered *for cancellation*, [by the household before the household is issued a transfer form.] the [certification] worker *authorizes* [will then authorize] *an* [a coupon] allotment *equal to the surrendered ATP's* [for the balance of the coupon allotment due the household] for the month of the move *and* [in addition to the] full *allotments* [coupon allotment] for the two subsequent months.

#### .004. Other Responsibilities.

(a) The completed original *Certification of Transfer of Household Benefits* form *and copy are* [will be] given to the household with instructions that the form be delivered to a food stamp certification office in the new county. [, if the household wishes to continue participation on the same basis as currently certified.] The copy *is* [will be] filed in the household's case record.

#### .005. Responsibilities of Gaining County.

(a) When the household presents *its* [a] *Certification of Transfer of Household Benefits* [Transfer] form to the *gaining* [food stamp] office [, in the gaining county], the [certification] worker *should first ensure the household meets residency requirements* [will establish the following factors of eligibility]. *If the household is not residing within the county, the worker returns the form and advises the household to reapply in the appropriate office.*

[(1)] The certification transfer form will be carefully checked to see that it has not been altered and the eligibility period has not expired.

[(2)] The household will be required to show that it is living in the county and does not reside in a boarding house or institution, except as provided under Rule 326.15.26.007.

[(3)] The household will be asked if all members are the same.

[(4)] The gaining county will be assured that cooking facilities are available, except as provided under Rule 326.15.32.002.

[(5)] If information provided by the household regarding any of the above items is questionable, such information must be verified before ATP's are issued to the household.]

(b) *The worker must ensure the household understands its option to apply under regular procedures at any time. However, certification under regular procedures voids any remaining part of the 50-day transfer of certification.*

(c) *If the household meets residency requirements and presents its Certification of Transfer of Household Benefits form, the original of the form will be retained in the case record regardless of the eventual action in the case. The copy will be sent to the originating office to notify it of the action taken.*

.006. *Coupon Issuance.* *After the criteria in Rule 326.15.82.014 have been met* [If satisfied the household

meets the above criteria], the [certification] worker *in the gaining office* [will]:

(a) *Issues* [Issue] the household an identification card.  
 (b) *For households transferring from another state, completes the computer form to issue the household its ATP(s). A manual ATP may be used if the household is in an emergency situation, as described in Rules 326.15.92.004-.008; if use of a machine-issued ATP would preclude household participation; or if an unstable address would make delivery of the ATP through the mail undependable. A manual ATP may be used when the household is transferring from county to county within the state, if the case record has not yet been received in the gaining office. A manual ATP must be used if a partial allotment is being authorized.* [Provide the household with a manual ATP(s) for the current month based on the net food stamp income, the coupon allotment (one-half or full), and the size of the household indicated on the certification transfer form.]

(c) *The worker files the original Certification of Transfer of Household Benefits form in the case record and sends a copy to the originating office.* [Notify the food stamp office issuing the certification transfer form of the receipt of the transfer form.]

(d) After receipt of the household's case record, the computer form will be processed to reflect the changes resulting from the transfer. The manual ATP flimsy, the Certification of Transfer of Household Benefits form, the receipt, and the transfer request will be filed in the household's case record. For Certification of Transfer of Household Benefits forms originating outside the state, the worker establishes a case record with a computer form, Certification of Transfer of Household Benefits form, [receipt] and, if applicable, authorization for issuance of manual ATP. PA certification offices will follow these procedures except those references to the transfer request.

(e) *If after the household has been certified for continued participation under the transfer procedure, it is discovered the certification of Transfer of Household Benefits form has been altered or was never authorized by the originating office, the household is given notice of adverse action and its case is denied. Recovery and/or fraud procedures are instituted as described in Rules 326.15.76.001-.027.*

#### *.007. Additional Continuations of Certification [Second Move within 60-Day Continuation].*

[(a)] If the household intends to move again during the same period before using its entire authorization, the certification worker will complete a new Certification of Transfer of Household Benefits form for the household. The new form will indicate the remaining coupon allotment *and/or entitlement to retroactive benefits being transferred*, [the household is entitled to purchase in the gaining county] and will have the same expiration date as the original form.

#### *.008. Expiration of 60-Day Continuation.*

[(a)] At the expiration of the certification period authorized by the original Certification of Transfer of Household Benefits form, the household must be certified under normal procedures before any further entitlement to food stamps can be established. The household *will* [shall] not be eligible for an additional 60-day continuation of certification unless normal certification has occurred and the household is

certified as eligible on the day it moves. [Households may request certification at any time during the 60-day period; however, the remaining portion of the period authorized in the certification transfer form is forfeited by such certification.]

Doc. No. 780588

### 326.15.82.009-.014

The Department of Human Resources proposes to add the following new rules to its rules about the policies and procedures for certifying households moving to a new county for a 60-day continuation of benefits provided in the Food Stamp Program. The department has revised the forms and procedures for a 60-day continuation of certification in order to add a provision for the transfer of retroactive benefits when a household is moving. The following rules specify the procedure for transferring information on the entitlement to retroactive benefits; procedures for handling the transfer forms which have been counterfeited and altered; the provisions for authorizing entitlement to retroactive benefits; and the provisions for authorizing entitlement to transfer of certification.

The department has determined that the proposed new rules will have no fiscal implications for the state or units of local government. These rules are an improvement in internal procedures only.

Written comments are invited and may be sent to Susan Johnson, Administrator, Systems and Procedures Bureau—730, Department of Human Resources, John H. Reagan Building, Austin, Texas 78701, within 30 days of publication in this Register.

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

#### *.009. Transfer of Retroactive Benefits.*

(a) Information on the entitlement to retroactive benefits may be transferred if the entitled member is moving to another county with the household. If the household has surrendered one or both of its current ATP's, the amount of retroactive benefits from the surrendered ATP is included in the remaining balance due.

(b) Information on the entitlement to retroactive benefits may be transferred at any time, regardless of eligibility for participation under regular or transfer procedures, if the household is moving to another county.

*.010. Altered Certification of Transfer of Household Benefits Forms.* The household must be advised to handle its Certification of Transfer of Household Benefits form with care as the gaining office may void forms which appear to have been altered. The household also should be advised that mutilation or destruction of the form may delay benefits.

*.011. Counterfeit Certification of Transfer of Household Benefits Forms.* If a copy of a redeemed Certification of Transfer of Household Benefits form is returned to the losing office but no such form was originated, the responsible program director immediately notifies the Investigations Division by telephone and follows up in writing. Investigations Division will check the possibility of widespread or individual misuse of Certification of Transfer of Household Benefits forms.



**.012. When Certification of Transfer of Household Benefits Form Was Altered.**

(a) If information in Part A of the Certification of Transfer of Household Benefits form appears to have been altered or corrected, the supervisor of the gaining office must, prior to authorizing continued certification, contact the originating office to verify the form's validity. If the form was altered, the household's transfer of certification is invalid. The household may apply under regular procedures if it wishes to avoid the delay of verification or if it is determined the form was, in fact, altered.

(b) The entitlement to retroactive benefits is not invalidated if the Certification of Transfer of Household Benefits form was altered. However, benefits may not be restored by the gaining office until verification of the amount to be restored has been received from the originating office.

**.013. Entitlement to Retroactive Benefits.**

(a) If retroactive benefits have been transferred, the gaining office may authorize these benefits provided:

(1) The individual entitled to these benefits has moved with the household.

(2) The household is eligible for participation based either on a transfer of its certification or certification under regular procedures. If the household is not eligible for participation, retroactive benefits cannot be restored until it becomes eligible.

(b) The household must be advised that if it moves again before all lost benefits are restored, and if it wishes to transfer its entitlement to these benefits, another Certification of Transfer of Household Benefits form will be required.

**.014. Entitlement to Transfer of Certification.**

(a) The household is eligible for a continuation of its certification based on its Certification of Transfer of Household Benefits form provided:

(1) All members have moved with the household.

(2) The household has access to cooking facilities, except as provided in Rule 326.15.32.002, and is not residing in a boarding house or institution.

(3) The 60-day continuation period established by the originating office has not expired.

(4) The household does not include an individual who receives SSI from a cash-out state. Cash-out states are those which provide a supplemental cash benefit to SSI recipients in place of their food stamp benefits. (California and Massachusetts are the only cash-out states.)

(b) If the above criteria are met, the household is eligible for a continuation of certification. Basis of issuance is computed based on the adjusted monthly net income and household size shown on the Certification of Transfer of Household Benefits form. If retroactive benefits are being provided, the household's basis of issuance is adjusted to include these benefits.

(c) If information provided by the household regarding the above criteria is questionable, it must be verified prior to issuance of an ATP to the household.

Issued in Austin, Texas, on January 24, 1978.

Doc. No. 780589      Jerome Chapman  
Commissioner  
Texas Department of Human Resources

Proposed Date of Adoption: March 2, 1978

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

## State Board of Insurance Rating and Policy Forms

### Fixing Rate of Automobile Insurance 059.05.01

The State Board of Insurance proposes to amend on a permanent basis its Rule 059.05.01.001, which adopted by reference *Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements*. The amendment is attached hereto and incorporated herein by reference.

The proposed amendment has no known fiscal implications for the state or for units of local governments. (Source: State Board of Insurance staff.)

The amendment adds a new rule to the Symbol and Identification section of the *Texas Automobile Manual* mandating a standard 10 percent collision coverage bumper discount for all 1978 model-year private passenger automobiles and permitting certain collision premium discounts greater than the standard discount for those private passenger automobiles which have been certified by the manufacturer to the State Board of Insurance as being able to sustain front and rear collisions at certain specified speeds without repairable damage.

Public comment on the amendment is invited and may be submitted in writing to D. E. O'Brien, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78786.

This amendment is proposed under the authority of Article 5.01 of the Texas Insurance Code.

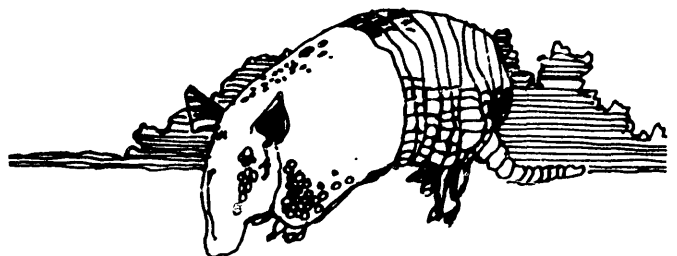
.001. *Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements*. The State Board of Insurance adopts by reference the attached *Rules and Rates Governing the Insuring of Automobiles and Standard Endorsements*, as amended in **December** [September], 1977. This document is published by and available from Texas Automobile Insurance Service Office, Suite 350, American Bank Tower, 221 West Sixth Street, Austin, Texas 78701.

Issued in Austin, Texas, on January 10, 1978.

Doc. No. 780607      Pat Wagner  
Chief Clerk  
State Board of Insurance

Proposed Date of Adoption: March 2, 1978

For further information, please call (512) 475-3486.



## Texas Parks and Wildlife Department

### Wildlife

#### Transporting, Shipping, and Exporting Bobcat Pelts 127.70.15

The Texas Parks and Wildlife Department is proposing to adopt Rules 127.70.15.001-.004, which would restrict the number of bobcat pelts that can be placed in international commerce. The proposed rules delineate procedures for tagging bobcat (*Lynx rufus*) pelts to qualify them for international export and the report requirements for shipping bobcat pelts out of this state.

The department staff has determined that the fiscal implications for the department are estimated as follows:

Fiscal Year	Estimated Costs (State)
1978	\$49,250
1979	49,250
1980	51,222
1981	53,270
1982	55,400

Public comments on Proposed Rules 127.70.15.001-.004 are invited. Comments may be submitted by telephoning (512) 475-4971, or writing to Dr. Harold D. Irby, Program Director Nongame Species, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.

Comments must be received within 30 days of the publication of this proposal in the *Texas Register*.

The following rules are proposed under the authority of Sections 67.001 through 67.005, Texas Parks and Wildlife Code, and Executive Order D.B. No. 35, issued by Governor Dolph Briscoe, January 6, 1978, to comply with the federal directives of the Endangered Species Scientific Authority (ESSA). These rules apply to bobcat (*Lynx rufus*) statewide.

#### .001. Definitions.

- (a) "Agent" means any commissioned game warden of the department.
- (b) "Commission" means the Texas Parks and Wildlife Commission.
- (c) "Department" means the Texas Parks and Wildlife Department.
- (d) "ESSA" means the Endangered Species Scientific Authority as created by Presidential Executive Order 11911 dated April 13, 1976.
- (e) "Harvest year" means from September 1 of one year to August 31 of the following year.
- (f) "Head" means the unfleshed skull including the lower jaw of a bobcat.
- (g) "Person" means the individual who takes the pelt of bobcats for the purpose of sale in international commerce.
- (h) "Tag" means a permanent, numbered metal marker issued and affixed by the department.
- (i) "Taking" means the pursuing, shooting, killing or capturing by any means any bobcat for the purpose of sale of the pelt.

#### .002. Limitations.

(a) The number of tags issued for any harvest year by the department will be limited to that authorized by the ESSA.

(b) Bobcat pelts, to qualify for shipment in international commerce pursuant to rules promulgated by the ESSA, must be permanently marked with a tag. Pelts for tagging must be presented by the person to any agent as soon as practical after taking. No pelts will be tagged unless the head is also presented. All heads presented will be marked by the agent for identification.

#### .003. Report Requirements.

(a) A report form provided by the department must be completed by the person taking the bobcat at the time the pelt is tagged. Information shall include but not be limited to: date trapped, county where taken, name and address of the person, tag number, date of tagging, and name of agent. Additionally, each person presenting a pelt for tagging must certify the information provided is true and correct.

(b) Any individual, firm, or corporation shipping or selling bobcat pelts out of this state must report, on forms provided by the department, the number of untagged bobcat pelts shipped, number of tagged bobcat pelts shipped, and the name and address of the consignee of those pelts within 20 days following shipment.

.004. Penalties. Penalties for violation of any of these rules are as prescribed in Section 67.005, Texas Parks and Wildlife Code.

Issued in Austin, Texas, on January 24, 1978.

Doc. No. 780613

Maurine Ray  
Administrative Assistant  
Texas Parks and Wildlife Department

Proposed Date of Adoption: March 2, 1978

For further information, please call (512) 475-4971.

## Office of the Secretary of State

### Elections

#### Suffrage 004.30.05.313

The secretary of state is proposing Rule 004.30.05.313, stating that no questionnaire or additional information may be required of an applicant who has properly completed a voter registration application. This rule is necessary to meet administrative problems concerning voter registration. This rule was adopted as an Emergency Rule on September 1, 1977.

This proposed rule has no fiscal implications for the state or for units of local government. (Source: Elections Division staff.)

Public comment on the proposed rule is invited. Comments may be submitted by telephoning the Elections Division of the Office of the Secretary of State at (512) 475-3091 or (800) 252-9602, or by writing the Elections Division at P.O. Box 12887, Austin, Texas 78711.

This rule is proposed under the authority of Articles 1.03, 5.02(b), and 5.13(a), Vernon's Texas Election Code.

*.313. Use of Questionnaires or Other Written Information in Qualifying Registrants.* No questionnaire or additional written information shall be required prior to the registration of any applicant for voter registration who has properly completed a voter registration form which has been prescribed by the secretary of state.

Doc. No. 780579

### 004.30.05.316

The secretary of state is proposing Rule 004.30.05.316 due to a conflict between House Bill 893, 65th Legislature, which eliminates the requirement that voters sign the ballot stub, and House Bill 1845, 65th Legislature, which failed to include the new language in House Bill 893 when it was passed later in the session. The secretary of state is enacting this rule to alleviate any conflict which might arise in forthcoming general and special elections throughout the state. This rule was adopted as an emergency rule on September 16, 1977.

This proposed rule has no fiscal implications for the state or for units of local government. (Source: Elections Division staff.)

Public comment on the proposed rule is invited. Comments may be submitted by telephoning the Elections Division of the Office of the Secretary of State at (512) 475-3091 or (800) 252-9602, or by writing the Elections Division at P.O. Box 12887, Austin, Texas 78711.

This rule is proposed under the authority of Article 1.03, Vernon's Texas Election Code.

*.316. Signature of the Ballot Stub in Absentee Voting.* Persons who are qualified to vote absentee under present state law are not required to sign their name on the back of the ballot stub in voting absentee, as expressed in Section 3 of House Bill 1845, 65th Legislature, 1977, which amends Article 5.05, paragraph (b) of subdivision 3b, Vernon's Texas Election Code.

Doc. No. 780580

### Conducting Elections 004.30.08

The secretary of state is proposing Rule 004.30.08.113 in order to clarify Senate Bill 850, 65th Legislature, which fails to state a date by which county registrars must furnish the list of registered voters to any authority conducting elections in the registrar's county.

This proposed rule has no fiscal implications for the state or for units of local government. (Source: Elections Division staff.)

Public comment on the proposed rule is invited. Comments may be submitted by telephoning the Elections Division of the Office of the Secretary of State at (512) 475-3091 or (800) 252-9602, or by writing the Elections Division, P.O. Box 12887, Austin, Texas 78711.

This rule is proposed under the authority of Article 1.03, Vernon's Texas Election Code.

*.113. Providing List of Registered Voters.* The certified list of registered voters which is prepared for each election precinct of the county by the voter registrar shall be prepared by the 20th day prior to the first election in each voting year, or by the date that absentee voting begins if absentee voting begins less than 20 days prior to the election. In no event shall such list be prepared later than the 10th day prior to the first election in each voting year.

Issued in Austin, Texas, on January 19, 1978.

Doc. No. 780581

Steven C. Oaks  
Secretary of State

Proposed Date of Adoption: March 2, 1978

For further information, please call (512) 475-3091.

# ADOPTED RULES

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, and the adoption may go into effect no sooner than 20 days after filing, except where a federal statute or regulation requires implementation of a rule on shorter notice.

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

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

## Coordinating Board, Texas College and University System

### Program Development

#### Approval of Off-Campus Credit Courses for Public Colleges and Universities 251.02.12

The Coordinating Board, Texas College and University System, has amended Rules 251.02.12.003(d) and .004(c) under the authority of Article 61.051, Vernon's Texas Codes Annotated.

*.003. Criteria for Approval of Out-of-District Course Offerings by Community Junior Colleges.*

(d) The Coordinating Board may approve a defined geographical or program area within which a given community junior college may offer courses.

*.004. Procedures for Approving Lower-Division Courses Proposed Off-Campus By Senior Institutions and Out-of-District by Junior/Community Colleges.*

(c) The steps for submitting applications to the Coordinating Board for authorization to offer out-of-district and off-campus lower-division courses are as follows:

(1) Each regional higher education council should meet at least annually in the spring semester and formulate its plan for lower-division courses at out-of-district and off-campus locations within its region during the following academic year.

(2) Proposed out-of-district and off-campus lower-division courses by any institution should be reviewed by the regional council to which the institution belongs and forwarded by a deadline set by the commissioner, as part of the plan for that region, to the Coordinating Board, together with the regional council's recommendations for approval or disapproval.

(A) If proposed out-of-district and off-campus lower-division courses could possibly affect an institution which is a member of another regional council, the proposal

should also be sent to the regional council to which the potentially affected institution belongs. That council should review the proposal and prepare a recommendation which should be returned to the originating council. This recommendation and the recommendation of the originating council should both be sent to the Coordinating Board.

(B) Out-of-district and off-campus lower-division courses proposed to be offered within a community college district or within the community of a senior institution should be noted for special consideration by the Coordinating Board.

(C) Lower-division courses (or programs) proposed to be offered on a regional and/or statewide basis should also be noted for special consideration by the Coordinating Board.

(D) An institution may make application for authorization to offer out-of-district and off-campus lower-division courses directly to the Coordinating Board. However, before the Coordinating Board takes action on the application, the application will be referred to the appropriate regional council(s) for consideration and recommendation.

(3) Upon receipt of the regional plans, the Coordinating Board staff will review them individually and in their composite form, and then, after consultation with the statewide advisory committee on out-of-district and off-campus lower-division course offerings, make recommendations to the Coordinating Board for action, no later than the July quarterly meeting.

Doc. No. 780572

### Financial Planning

#### General Provisions 251.03.02

This rule is promulgated under the authority of Vernon's Texas Code Annotated, Section 61.503.

*.004. Criteria for Allocation of Fiscal Year 1978 Funds Appropriated for Funding Family Practice Residency Programs.*

(a) Eighty percent shall be awarded on a capitation basis to existing family practice residency training programs.

(b) Twenty percent shall be reserved for developing new programs and expanding existing programs.

Doc. No. 780573

### Campus Planning and Physical Facilities Development

#### General Provisions 251.04.02

The Coordinating Board, Texas College and University System, has amended Rule 251.04.02.002(b) under the authority of Title VI-A and VII of the Higher Education Act of 1965 (Public Law 89-329).

*.002. Grants for Construction and Equipment.*

(b) The awarding of grants for the purchase of equipment and materials for the improvement of instruction under Title VI-A of the Higher Education Act of 1965 shall be governed by the provisions of the October, 1977, edition of the *State Plan for Part A, Title VI of the Higher Education Act of*

1965, as amended. Copies are available in the Coordinating Board offices.

Doc. No. 780574

## **Criteria for Approval of New Construction and Major Repair and Rehabilitation 251.04.03.001, .005**

The Coordinating Board, Texas College and University System, has amended Rules 251.04.03.001 and .005 under the authority of Vernon's Texas Codes Annotated, Section 61.058.

**.001. Object of Rules.** These rules are to prescribe the criteria which shall be considered by the Coordinating Board in approving or disapproving all new construction and major repair and rehabilitation of all buildings and facilities at institutions of higher education, regardless of proposed use or source of funding as required by Senate Bill 706, 64th Legislature, and Senate Bill 450 of the 65th Legislature.

**.005. Major Repair and Rehabilitation.** Coordinating Board approval for major repair and rehabilitation of buildings and facilities shall be limited to projects the total cost of which is in excess of \$100,000.

Doc. No. 780575

## **251.04.03.009-.010**

The Coordinating Board, Texas College and University System has amended Rules 251.04.03.009 and .010 under the authority of Vernon's Texas Codes Annotated, Section 61.058.

**.009. Consideration of Financial Implications.** The Coordinating Board's review of construction projects includes consideration of costs prior to approval or disapproval of a proposed project which costs more than \$500,000.

**.010. Provisions for Emergency Approval.** Coordinating Board consideration of an emergency construction request is delegated to a special committee composed of the chairman of the board, chairman of the facilities committee, and the commissioner of higher education to act upon requests of an emergency nature between scheduled meetings of the board.

Doc. No. 780576

## **Student Services**

### **Hinson-Hazelwood College Student Loan Program for All Loans Made for or after Fall Semester, 1971, and which are Subject to the Provisions of the Federally Insured Student Loan Program 251.05.04**

The Coordinating Board, Texas College and University System, has adopted amendments to Rule 251.05.04.007(a) and (b) under the authority of Vernon's Texas Codes Annotated, Chapter 52.

### **.007. Amount of Loan.**

(a) The maximum amount of loan to any qualified applicant in a fiscal year is \$2,500, except that qualified applicants enrolled in a professional school of medicine, osteopathy, dentistry, veterinary medicine, optometry, or public health, may borrow a maximum of \$5,000 in a fiscal year. The amount of loan shall not exceed the amount that the student needs in order to meet reasonable expenses as a student. A change in either financial resources or reasonable expenses of the student which results in an increase in the financial need of the student may make the student eligible for additional loans. A change in either financial resources or reasonable expenses of the student which results in a decrease in the financial need of the student shall make the student responsible for the immediate repayment of any overcommitment of loan funds. Repayment may be restored to the fund by a cash payment or by the reduction of any pending loan disbursement to the student. Prior to recommending the loan, the Hinson-Hazelwood College Student Loan Program officer at the institution shall make certain that the student is properly utilizing his or her eligibility for the Basic Opportunity Grant and all other forms of student assistance, including a reasonable amount to be earned from employment during the period of the loan.

(b) Aggregate maximum of loan. The total outstanding principal balance to any individual student may not exceed \$7,500 at any time, except that a student enrolled in a graduate or professional school other than those enumerated below may borrow up to an aggregate maximum of \$10,000 (including amounts borrowed at the undergraduate level), and that a student enrolled in a professional school of medicine, osteopathy, dentistry, veterinary medicine, optometry, or public health may borrow up to an aggregate maximum of \$15,000 (including amounts borrowed at the undergraduate and/or graduate level).

Doc. No. 780577

## **Tuition Equalization Grants Program 251.05.05**

The Coordinating Board, Texas College and University System, has adopted amendments to Rule 251.05.05.006(b) under the authority of Vernon's Texas Codes Annotated, Section 61.221-.29.

### **.006. Certification and Disbursement Procedure.**

(b) Disbursement of funds. To provide accessibility of funds to eligible students and to provide an orderly and timely method by which applicants may be notified of awards, the commissioner shall annually establish a preliminary fund reservation which each Tuition Equalization Grants officer may certify to eligible students. Each preliminary fund reservation shall be based upon the number of fulltime Texas resident students of appropriate classification enrolled in a program other than a theological or religion degree program in each approved institution in the preceding fall term. Should any Tuition Equalization Grants officer not certify grants totaling the amount of the preliminary fund reservation by December 1 of the fiscal year, then any uncertified funds shall be reallocated to meet the needs of eligible students applying for grants to other Tuition Equalization Grants officers. Effective December 15 of each year, any uncommitted funds will be applied to individual applications in

the order of receipt by the Coordinating Board. This processing, on a first come/first serve basis, will continue until all appropriated funds have been granted or until all eligible applicants have received grants. Funds freed due to warrant cancellations and refunds will be available for re-use by the involved institution until February 15, at which time remaining funds will revert to processing on a first come/first serve basis, as described above.

Issued in Austin, Texas, on January 20, 1978.

Doc. No. 780578      Kenneth H. Ashworth  
Commissioner of Higher Education

Effective Date: February 13, 1978

For further information, please call (512) 475-2033.

## Texas Education Agency Instructional Resources

### Instructional Television Services Program 226.33.21.010, .020, and .030

The Texas Education Agency has adopted Rules 226.33.21.010, .020, .030, .040, .050, and .060 concerning the Instructional Television Services Program. Senate Bill 1, 65th Legislature, Special Session, amended Section 21.915 of the Texas Education Code, in which this program is treated. Under the new legislation, expenditure for the program is limited to \$1,625,000 each year, which does not increase the scope of the program over the previous biennium. However, the state will now fund the entire approved program of the school district, within the overall funding limit.

Rules .010, .020, and .030 concern the authorization and eligibility for participation in the program. Districts wishing to participate must submit an application, a copy of their contract or program budget, and an annual plan for instructional television services. Rule .030 requires that each participating district have an educational television committee. Rule .040 requires that each nonprofit contractor for instructional television services who serves more than one district under this program shall have an instructional television services committee with at least one representative from each contracting school district. Rule .050 states that both noncommercial FCC-licensed television stations and other nonprofit originating video communications systems are eligible as contractors for this program. Rule .060 concerns the State Advisory Committee for Instructional Television Services, and sets out the purposes, membership, rules for appointment, and terms of office for the committee. This committee is mandated by Section 21.915(d), Texas Education Code.

Public review and discussion of the proposed rules were held. These rules are adopted with one change from the text proposed. Subsection (4) under Section (b) of Rule .030 should read: "assisting in providing or organizing work conferences to develop or maintain teacher utilization skills in the use of television programming."

These rules are adopted under the authority of the Texas Education Code, Section 21.915.

#### .010. Authorization.

(a) Policy. The Instructional Television Services Program shall be provided as a public education program in accordance with law.

(b) Administrative procedure. Annually, the Division of Instructional Resources notifies each school district of the provisions for financial support for instructional television services.

#### .020. Eligibility and Participation.

(a) Policy. Eligibility to participate in the Instructional Television Program of funding for ITV Services shall be extended to any common, independent, or rural high school district in accordance with law.

(b) Administrative procedure.

(1) Each district desiring to receive state support for instructional television services must submit an application for state funds, a copy of the contract with the noncommercial FCC licensed station and/or a budget for ITV Services, and a copy of the district's annual plan for their ITV Program to the Texas Education Agency on or before the end of the school year preceding that year for which funds are being sought.

(2) Participation in state funding shall be contingent on submission, review, and approval of the annual district plan for ITV Services.

(3) Services for which a school district may contract in accordance with law are:

- (A) programming,
- (B) utilization services,
- (C) development of materials.

(4) Contracts may be made with noncommercial FCC licensed stations and other nonprofit-originating video communications systems.

#### .030. District Instructional Television Committee.

(a) Policy. An instructional television committee shall be established for each school district participating in this television services program. (Instructional Television Funding, Rule 226.41.14.010.)

(b) Administrative procedure. Each participating district shall have an instructional television committee of not less than five members representing a cross section of curriculum areas and levels and an instructional resources director or designee. The ITV committee shall be responsible for:

(1) developing the district's annual operational plan for providing ITV Services which are an integral part of the instructional program;

(2) designating methods by which content is to be selected and offered via television media;

(3) providing teacher guides appropriate for the television media used in the district;

(4) assisting in providing or organizing work conferences to develop or maintain teacher utilization skills in the use of television programming;

(5) evaluating the district's ITV Services program and assisting in developing an annual report to the Texas Education Agency.

#### .040. Multidistrict Instructional Television Services Committee.

(a) Policy. Each nonprofit contractor serving more than one district and receiving compensation for said services from the funds disbursed under this program shall have



a committee composed of at least one representative from each contracting school district served.

(b) Administrative procedure. Each nonprofit contractor serving more than one district and receiving compensation for said services from the funds disbursed under this program shall have a committee composed of at least one representative from each contracting school district served. The multidistrict committee is responsible for:

(1) advising the contractor as to the content and instructional design of provided programming and other contracted for services;

(2) communications and liaison activities relative to contracted ITV services;

(3) evaluation of contracted services and of the adjunct services program of the contractor.

#### *.050. Multidistrict Services Sources.*

(a) Policy. Noncommercial FCC-licensed television stations and other nonprofit-originating video communications systems are eligible as contractors to districts to provide instructional television services as established by law.

(b) Administrative procedure. Noncommercial FCC-licensed television stations and other nonprofit-originating video communications systems providing instructional television services to public school districts under this program will offer ITV services including, but not limited to, the following:

(1) programming (instructional content in television format),

(2) teacher guides, schedules, and other materials appropriate to assist users of ITV programs.

(3) utilization services including in-service for district faculty and on-going consultation or other such assistance to enhance proper use of instructional television.

(4) assistance in selection and evaluation of programming.

(5) distribution services to deliver programming to each contracting district.

#### *.060. State Advisory Committee for Instructional Television Services.*

(a) Policy. An advisory committee shall be appointed by the commissioner of education in accordance with law. The committee will assist the Texas Education Agency by offering recommendations regarding governance, planned needs, criteria for establishing eligibility, and a process for program and fiscal accountability of school district instructional television services.

(b) Administrative procedure.

(1) Purpose. An advisory committee shall be appointed by the commissioner of education in accordance with law. The committee will assist the Texas Education Agency by offering recommendations regarding governance, planned needs, criteria for establishing eligibility, and a process for program and fiscal accountability of school district instructional television services.

(2) Membership. Membership of the committee shall in accordance with law include representation from each instructional FCC-licensed nonprofit television broadcasting service in the state and representatives of educational consumers. Educational consumer representatives shall include not less than five members from the public schools of the state.

(3) Appointment and terms of office. Members of the ITV Advisory Committee shall be appointed by the commissioner of education in accordance with law. Members other

than FCC-licensed services representatives shall serve two-year terms and may be reappointed. In the event a member ceases to represent the category for which appointed, the member shall automatically vacate membership on the committee. In the event an FCC-licensed service shall cease to be licensed, the member representative shall automatically vacate membership on the committee. Increases or decreases in membership may be made as FCC licensing and other conditions dictate. The state director of the Division of Instructional Resources shall serve as chairperson of the committee.

(4) Meetings. The ITV Advisory Committee shall meet at least annually and may be convened at other times as necessary to pursue its responsibilities.

Doc. No. 780593

## State Textbook Program in General 226.33.31

The Texas Education Agency has amended Rules 226.33.31.020 and .090, concerning the State Textbook Program.

Senate Bill 1, 65th Legislature, Special Session, amended the Texas Education Code, Section 12.01, to include provision for the adoption by the State Board of Education of "learning systems," as well as certain supplementary materials to be used in conjunction with specific adopted textbooks. Proposed changes in Rules 226.33.31.020 and .090 are for the purpose of including provisions for adoption of learning systems and supplementary instructional materials in accordance with law. The proposed change in Rule .020 expands the definition of a "textbook." Rule .090 provides that consumable textbooks, learning systems, and supplementary materials may be considered for adoption by the State Board of Education only in those areas recommended by the commissioner of education. The previous restriction that consumable textbooks may be considered only for the first and second grades is deleted.

Public review and discussion of the proposals were held. These rules are adopted with no change from the text proposed.

These rules are promulgated under the authority of the Texas Education Code, Sections 11.02, 11.24(b), 12.01, 12.13-12.16, 12.18, 12.24, and 12.34.

#### *.020. Definition.*

(a) Policy. "Textbook" means a bound book in the usual sense, which may be in two or more volumes, and which may be of a consumable workbook type. (Special definitions: textbooks for blind and visually handicapped pupils, Rule 226.33.38.010; kindergarten textbooks, Rule 226.33.39.010; textbooks for pupils in bilingual classes, Rule 226.33.40.010). It also means a learning system which is a coordinated system of instructional materials in one or more media that conveys to the pupil information on a subject comparable to that contained in the approved textbook. It also means combinations of books and supplementary instructional materials, in any medium, that are used as an adjunct to a specific adopted textbook. (Reference: Attorney General's Opinions V-528, March 27, 1948; V-407, October 6, 1947; and V-465, December 23, 1947.)

**.090. Consumable Textbooks, Learning Systems, and Supplementary Instructional Materials.**

(a) Policy. Consumable textbooks, learning systems, and supplementary instructional materials may be considered for adoption by the State Board of Education only in those subjects recommended by the commissioner of education.

Doc. No. 780594

## Planning and Evaluation

### Principles, Standards, and Procedures for the Accreditation of School Districts—1977, 226.37.15

The Texas Education Agency has amended Rules 226.37.15.310, .330, .350, and .370, concerning principles, standards, and procedures for the accreditation of school districts.

Senate Bill 1040, 65th Legislature, added Section 21.120, Economic Education, to the Texas Education Code. The purpose of this section is to "insure the development of a comprehensive economic education program for all children in grades one through 12 in the public schools of the state." The amendments to the principles and standards for accreditation add economic education to the table showing essential curriculum elements prescribed by state law (Rule .310(a)), to the description of balanced elementary curriculum (Rule .330), and to the description of curriculum content in the secondary grades (Rule .350).

Rule .370 is amended to allow teachers with high school level teaching certificates to teach in grade six, in accordance with the provisions of Senate Bill 188, 65th Legislature.

Only Section (a) of Rule .310 is changed. The rest of that rule remains unchanged. Only Section (a) of Rule .350 is changed. The rest of that rule remains unchanged.

Public review and discussion of the proposed rules were held. The rules are adopted with no changes from the text proposed.

These rule amendments are adopted under the authority of the Texas Education Code, Sections 11.26(a)(5) and 16.053.

**.310. Essential Curriculum Elements Prescribed by State Law and State Board of Education Policy.**

(a) Essential curriculum elements prescribed by state law. The table entitled "Essential Curriculum Elements Prescribed by State Law," as amended January, 1978, is adopted by reference as the Texas Education Agency's official rule. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency (headquarters) Building, 201 East 11th Street, Austin, Texas.

**.330. Description of Balanced Elementary Curriculum.** Each elementary school maintains a balanced curriculum offering, including English language arts,\* science, mathematics, social studies, art, drama, music,\*\* health, physical education, and, if desired, foreign languages. Curriculum content is not prescribed in detail by the agency, but local instructional plans may draw upon state curriculum frameworks and program standards, as appropriate.

The elementary school curriculum is considered to be balanced when the offerings listed above are included in the instructional program for students. The responsibility for enabling all children to participate actively in a balanced curriculum which is designed to meet individual needs rests with the local school district.

The daily schedule includes instruction in the areas of English language arts, science, mathematics, social studies, and physical education. The time allocated for instruction in each of these areas is determined by results of student needs assessment conducted by the local school district (Principle 4, Standard 4(c), Rule .240) and by diagnosis of individual pupil competencies and deficiencies.

The weekly schedule includes art, music, drama, and health. A balanced curriculum does not stress one of these areas to the detriment of others in the total program. In addition to being treated as separate subjects, art, music, and drama are included, when appropriate, in all areas of the elementary curriculum.

Career education, drug education, and safety education are integrated into all areas of the program. The inclusion of foreign languages and industrial arts in the elementary curriculum is encouraged. Bilingual education is offered in accordance with appropriate statutes. Districts are encouraged to exceed minimum requirements of the laws.

Citizenship, conservation of natural resources, and economic education, including an understanding of the free enterprise system, are correlated with instruction in curriculum offerings.

Local instructional plans are in written form. They specify goals and objectives; describe procedures for diagnosis, prescription, and evaluation in terms of individual pupil progress and curriculum balance; and provide for cooperative planning by professional and nonprofessional staff members.

**.350. Description of Content in Secondary Grades.**

(a) Curriculum content is not prescribed in detail by the agency, but local instructional plans may draw upon curriculum frameworks and program standards as appropriate.

Local instructional plans are in written form. They specify goals and objectives; describe procedures for diagnosis, prescription, and evaluation in terms of individual student progress and curriculum balance; and provide for cooperative planning by professional and nonprofessional staff members.

Each accredited secondary school (grades seven through 12) makes available to students the subjects listed below:

- (1) English (six years).
- (2) Mathematics (six years), including one year of algebra and one year of geometry.
- (3) Science (six years), including biology, chemistry, and physics.
- (4) Social studies (six years), including one year of Texas history\*\*\* and geography in grade seven; two years of American history, including one year of American history and citizenship in grade eight, and three quarters of American history in any grade, nine through 12; three quarters of either world history studies or world geography studies in any grade, nine through 12; two quarters of American government, which includes study of the Texas and United States Constitutions.\*\*\*\* Instruction on the essentials and benefits of the free enterprise system is incorporated within the re-

quired courses of American history, world history studies or world geography studies, and American government.

(5) Economic education, in accordance with the Texas Education Code, Section 21.120.

(6) Physical education (six years), in accordance with the Texas Education Code, Section 21.117.

(7) Health, in accordance with the Texas Education Code, Sections 21.101 and 21.104.

(8) Vocational education programs offered according to student needs and actual or anticipated opportunities for gainful employment. Because of the nature of the design of vocational education courses and the characteristic inclusion of a multiquarter project or activity, the district shall enroll a student for three consecutive quarters in each vocational course in order for credit to be granted as earned.

(9) An elective course on the free enterprise system (one quarter unit), in accordance with the Texas Education Code, Section 21.1031.

(10) A foreign language program according to local needs.

(11) Additional elective courses sufficient to meet the needs of students in grades seven through 12.

### .370. Requirements for Assignment of Teachers.

(a) All professional personnel are graduates of colleges and universities which are (1) approved by the Texas Education Agency for teacher education program, or (2) otherwise recognized by the Texas Education Agency for public school professional employment purposes. Certain exceptions are specified in Agency Bulletin 753, *Guidelines for School Personnel: Certification, Allocations, and Records*.

(b) All professional personnel hold valid Texas teachers certificates appropriate for their current assignments.

(c) Teachers are assigned in areas or subjects for which they have completed an approved program of teacher education.

(1) An individual who met standards which were in effect for teaching a subject prior to September 1, 1966, shall remain eligible to teach the subject without additional preparation. Requirements in effect for particular years prior to September 1, 1966, are detailed in Columns II and III in the List of Requirements for Assignment of Teachers.

(2) An individual receiving a secondary certificate dated after September 1, 1966, must have the proper teaching field on the certificate in order to meet standards for teaching the subject in grades six through 12. Where teaching fields have been added after September 1, 1966, that modify minimum requirements for teaching a subject, such modifications are explained in footnotes on the appropriate page(s) of the list of Requirements for Assignment of Teachers.

(3) An individual who met the preparation requirements in effect for a subject in the "List of Approved Subjects and Courses, Grades Seven and 12" on the date of issuance of the individual's certificate shall remain eligible to teach the subject even though additional preparation requirements may be subsequently added.

(4) If grades six, seven, and eight are organized on a "self-contained" basis, the preparation of the teacher must comply with the standards applicable to elementary teachers. "Self-contained" is defined as a class which is taught by one teacher for 50 percent or more of the school day.

(5) Teachers in departmentalized grades seven and eight must have either the elementary, all-level, or secondary certificate with appropriate preparation as specified in Columns II, III, IV, and V. Teachers with an elementary area of specialization must meet the semester hour requirements shown in Column III in the List of Requirements for Assignment of Teachers, Grades Seven and Eight Departmentalized.

(6) If grade six is organized on a departmentalized basis, a subject may be taught by (1) a teacher with a secondary certificate with the appropriate preparation (see Columns II, III, and IV), or (2) a teacher with an elementary certificate.

Note: Although teachers with an elementary certificate are not required to have a specific number of hours to teach a subject in a grade six departmentalized organization, the district is encouraged to give careful attention to the preparation of teachers so assigned.

(7) When emergency conditions require, a teacher may be assigned without the required preparation in accordance with regulations specified in Agency Bulletin 753, *Guidelines for School Personnel: Certification, Allocations, and Records* and further, provided each teacher assigned under these conditions is reported to the school board.

\*Reading, literature, oral language, composition, speech, handwriting, spelling, mechanics, usage, and grammar.

\*\*Refers to general music, which is the basic program. Choral and instrumental music may be offered in addition to general music.

\*\*\*Texas Education Code, Section 21.103.

\*\*\*\*Texas Education Code, Section 21.106.

Doc. No. 780595

## Foundation School Program

### Instructional Television Services Program 226.41.14

The Texas Education Agency has amended Rule 226.41.14.010, concerning funding for the Instructional Television Services Program. Senate Bill 1, 65th Legislature, Special Session, amended Section 21.915 of the Texas Education Code to provide full state funding for the Instructional Television Services Program up to a limit of \$1,625,000 each year. Under previous legislation, costs were shared by the state and by participating local districts. The amendment to Rule 226.41.14.010 reflects this change in the law. A specific definition of full services has been deleted from the rule. Instead, payment to districts shall be contingent upon approval of a district's annual instructional television services plan. Applications to participate in the program must be filed on or before the end of the school year preceding the year for which funds are being sought, rather than by October 1 of each year.

Public review and discussion of the proposed changes were held. There are no substantive changes from the text as proposed. However, in the published version of the proposed rule, the word "funding" was omitted from the subcategory title. The last sentence of .010(b)(2) should read "Application shall be made on an appropriate Texas Education Agen-

cy form and be accompanied by a copy of the district's plan for their ITV services program."

This rule is adopted under the authority of the Texas Education Code, Section 21.915.

**.010. Determination of Allocation.**

(a) Policy. Any school district, common, independent, or rural high school district, may contract for and use approved instructional television services and be reimbursed from the Foundation School Program Fund for the cost of such approved services, not to exceed \$1.50 per participating pupil in average daily attendance in the district during the preceding year. (Instructional Television Services Program, Rules 226.33.21.010-.060)

(b) Administrative procedure.

(1) Payment. Payment shall be made from the Foundation School Program Fund for district contracted services, not to exceed \$1.50 per participating pupil in average daily attendance in the district during the previous school year. Payment is authorized by the Division of Instructional Resources pursuant to approval of a district's annual ITV Services Plan. In the event the extent of total participation (ADA) in ITV Services exceeds the legislatively authorized total amount of funds per year, per-pupil allocation shall be ratably reduced to stay within the authorized annual limit.

(2) Filing. Districts desiring to participate in ITV funding shall apply to the Texas Education Agency on or before the end of the school year preceding the year for which funds are being sought. Application shall be made on an appropriate Texas Education Agency form and be accompanied by a copy of the district's plan for their ITV Services Program.

Issued in Austin, Texas, on January 24, 1978.

Doc. No. 780596 M. L. Brockett  
Commissioner of Education

Effective Date: February 13, 1978

For further information, please call (512) 475-7907.

## Texas Department of Mental Health and Mental Retardation

### Client (Patient) Care

#### Transfer of Court-Committed Patients to Rusk State Hospital Maximum Security Unit 302.04.18

Under the authority of Section 2.11(b) of Article 5547-202, Texas Civil Statutes, the Texas Department of Mental Health and Mental Retardation has adopted Rules 302.04.18.001-.031 to read as follows:

**.001. Purpose.** The purpose of these rules is:

(a) To prescribe emergency and nonemergency procedures whereby a manifestly dangerous patient can be transferred to the Rusk Hospital Maximum Security Unit.

(b) To authorize the establishment of institutional review boards at state mental health facilities to determine whether a patient is manifestly dangerous.

(c) To prescribe procedures for the functions of the institutional review board.

(d) To enumerate the rights of patients with respect to transfer to Rusk State Hospital Maximum Security Unit.

**.002. Application.** The provisions of these rules apply to the mental health facilities of the Texas Department of Mental Health and Mental Retardation and to the patients specified herein.

**.003. Definitions.** In these rules:

(a) "Department" means the Texas Department of Mental Health and Mental Retardation.

(b) "Superintendent" means the superintendent or director of the departmental mental health facility at which the patient resides.

(c) "Institutional review board" means the board established pursuant to Rule .005 of these rules.

(d) "Patient" means any person under commitment in a state mental health facility other than in the Rusk State Hospital Maximum Security Unit.

(e) "Commissioner" means the commissioner of the Texas Department of Mental Health and Mental Retardation.

(f) "Deputy commissioner" means the deputy commissioner for Mental Health Services of the Texas Department of Mental Health and Mental Retardation.

(g) "Patient's counsel" means a lawyer representing the patient.

(h) "Chairperson" means the individual so designated in the appointment of that individual to serve as a member of the institutional review board.

(i) "Manifestly dangerous" means that an individual has engaged, is presently engaging, or will likely engage in violent behavior; that such behavior is likely to endanger another person or persons; and that if the individual is not confined in a maximum security environment, he will most likely engage in such behavior.

**.004. Transfer of Patients to the Rusk State Hospital Maximum Security Unit Who Are Determined to be Manifestly Dangerous.**

(a) A patient may be transferred from a state mental health facility to the Rusk State Hospital Maximum Security Unit only if determined to be manifestly dangerous by the institutional review board of the transferring facility pursuant to Sections (b) or (c) of this rule.

(b) When the superintendent is of the opinion that the patient is manifestly dangerous and does not require immediate transfer to the Rusk State Hospital Maximum Security Unit, he will inform the institutional review board, which will give notice and hold a hearing in accordance with the procedures specified and the rights granted by Rules .006-.028 of these rules.

(c) When the superintendent is of the opinion that the patient is manifestly dangerous and requires immediate transfer to the Rusk State Hospital Maximum Security Unit, he will inform the institutional review board, which will hold an emergency hearing so that the patient can be immediately transferred to the Rusk State Hospital Maximum Security Unit upon a finding of manifest dangerousness. The emergency hearing provided for in this subsection:

(1) shall be initiated, held, and documented as provided in Rule .006 of those rules;

(2) shall use the standards provided for in Rule .007 of these rules in making the determination of manifest dangerousness;

(3) need not be held in conformity with Rules .010-.028 of these rules, which provide certain rights for patients before an institutional review board;

(4) may result in recommendations as to matters other than manifest dangerousness including, but not limited to, whether the patient requires immediate transfer to Rusk State Hospital Maximum Security Unit as provided in Rule .009 of these rules;

(5) shall include a personal interview of the patient proposed to be transferred;

(6) shall not be attended by members of the patient's treatment team unless requested by the institutional review board or by the patient;

(7) shall result in a determination of whether the patient is manifestly dangerous, such determination to be made by a simple majority of the voting members based on

(A) information furnished to the institutional review board by the superintendent as provided in Rule .008 of these rules,

(B) the personal interview of the patient,

(C) the testimony of witnesses, and

(D) such other evidence as the institutional review board may have before it; and

(8) shall result in a written report as provided for in Rule .010 of these rules.

(d) When the patient is transferred to the Rusk State Hospital Maximum Security Unit based on an emergency hearing and determination of manifest dangerousness pursuant to Section (c) of this rule, he may not be held there without a determination of manifest dangerousness by the review board established by Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Review Board (Rusk State Hospital Maximum Security Unit) for Making a Determination of Manifest Dangerousness, 302.04.10, after notice (using the form attached to these rules as Exhibit A) and hearing in accordance with the procedures specified in and rights granted by the rules under which the review board conducting the hearing was organized.

(e) The review board established by Rules of the Commissioner of Mental Health and Mental Retardation Affecting Client (Patient) Care, Review Board (Rusk State Hospital Maximum Security Unit) for Making a Determination of Manifest Dangerousness, 302.04.10, shall conduct new hearings in accordance with Sections (d), (e), (f), and (g) of Rule .027 of those rules for all patients transferred to the Rusk State Hospital Maximum Security Unit pursuant to Sections (b) and (c) of this rule. Patients transferred pursuant to these rules shall have a hearing during the first meeting of the review board, established pursuant to Rule 302.04.10, which is held after the patient's arrival at the Maximum Security Unit. Upon a finding that the patient is not manifestly dangerous, he shall be returned to the transferring facility.

(f) If a patient is returned to the transferring facility pursuant to Sections (d) or (e) of this rule, he may not be made subject to another hearing under this rule unless the superintendent has cause to believe that a change in the patient's condition is sufficient to warrant a new hearing.

(g) It is the intent of the department that the emergency hearing procedure be considered as an extraordinary procedure to be used only when the condition of the patient renders the procedure outlined in Section (b) (which includes 10 days notice and a full hearing) impossible.

(h) In order for a patient to be transferred to the Maximum Security Unit under Sections (b) or (c) of this rule, there must be evidence submitted to the institutional review board that all available treatment programs have been attempted with no significant results.

(i) The facility from which the patient was transferred under Sections (b) or (c) of this rule shall be responsible for all transportation of that patient required by this rule.

(j) No person who is voluntarily admitted to a facility of the department shall be transferred to Rusk State Hospital Maximum Security Unit under these procedures.

#### .005. *Appointment of Institutional Review Board.*

(a) The deputy commissioner shall appoint an institutional review board at each mental health facility of the department. The function of the institutional review board is to make a determination as to whether a patient who is being considered for transfer under these rules is manifestly dangerous.

(b) Each institutional review board shall consist of five members, one of whom shall be designated to serve as chairperson by the deputy commissioner. No members of the patient's treatment team shall serve on the review board. The term of each member of the institutional review board shall be one year. If a vacancy occurs on an institutional review board for any reason, the deputy commissioner shall appoint a qualified person from the facility to serve the remainder of the vacating member's term.

(c) Each member of an institutional review board shall be a mental health professional, provided, however, that no institutional review board may consist of more than two members who are medical doctors.

(d) In the event that a member of the institutional review board is also a member of the treatment team of the patient being considered for transfer under these rules, the member shall be disqualified from participating in the proceeding to determine whether that patient is manifestly dangerous. Whenever such a situation presents itself, the remaining members, by a majority vote, shall appoint another mental health professional to serve in the place of the disqualified member.

#### .006. *Meetings and Minutes of the Institutional Review Board.*

(a) The institutional review board shall convene at the call of the superintendent.

(b) The superintendent shall provide the chairperson with a list of patients to be considered by the institutional review board.

(c) All meetings of the institutional review board for the purposes of determining manifest dangerousness shall be in the facility where the patient resides.

(d) The chairperson of the institutional review board shall provide that minutes will be kept of all meetings of the institutional review board. The minutes of each meeting shall record at least the following information:

(1) place, date and time of meeting;

(2) members of the institutional review board present;

(3) name and case number of all patients reviewed by the institutional review board;

(4) all decisions by the institutional review board as to whether or not each patient is determined to be or not to be manifestly dangerous; and

(5) any other actions and recommendations of the institutional review board.

(e) A copy of all minutes of the institutional review board shall be:

(1) maintained by the chairperson as a permanent file;

(2) provided to the superintendent;

(3) provided to the deputy commissioner; and

(4) provided to the chief of legal services of the department.

**.007. Standards Used in the Determination of Manifest Dangerousness.** The institutional review board shall use the standards developed by the Review Board of Rusk State Hospital as required by Rule 302.04.10.007 in making a determination of manifest dangerousness.

**.008. Information and Records to be Furnished to the Institutional Review Board by the Superintendent.**

(a) The superintendent shall provide all necessary information and records regarding the patient to the institutional review board including:

(1) name of patient, date of admission, and age;

(2) date and full description of the alleged incident or incidents of behavior believed to indicate that the patient is manifestly dangerous;

(3) complete hospital social history;

(4) all psychological test materials and findings;

(5) observational reports of nursing service, security guards, and other staff members;

(6) physical and neurological examination results, including electroencephalograph, laboratory, and roentgenologic reports;

(7) mental status at admission and as last recorded; and

(8) current chemotherapy.

(b) The patient and his representative, if any, shall have access to all of the material the superintendent has furnished to the institutional review board. This provision is not intended to diminish in any way the patient's right to access to his hospital records.

(c) If the patient's treatment team is of the opinion that there are portions of the patient's records which would be harmful to the patient if viewed by him, then the treatment team shall advise the superintendent of the existence of such records. If the superintendent concurs with the treatment team's opinion that portions of the patient's records would be harmful to the patient if viewed by him, the superintendent may withhold such harmful portions from consideration by the institutional review board, Section (a) of this rule notwithstanding.

**.009. Advice from the Institutional Review Board as to Matters Other than Manifest Dangerousness.** The institutional review board may provide advice and recommendations as to matters other than manifest dangerousness with respect to patients before it.

**.010. Procedure for the Determination of Manifest Dangerousness by the Institutional Review Board.**

(a) The institutional review board shall review the information available on each patient and shall conduct a hearing to determine whether the patient is "manifestly dangerous" as required by Rule .004 of these rules.

(b) The institutional review board shall, before rendering its decision, conduct a personal interview of each patient in such manner as shall be determined by the institutional review board.

(c) No member of the patient's treatment team shall be present during the interview of the patient or hearing unless

(1) requested by the institutional review board,

(2) the patient desires to have a member of the treatment team present, or

(3) called as a witness by the patient, his counsel, or representative.

(d) The institutional review board shall determine whether or not each patient is manifestly dangerous by simple majority vote and shall prepare a written decision specifying the reason for the determination and the elements of the standards referenced in Rule .007, Section (a), of these rules on which the determination was based. The written decision by the institutional review board shall comply in all respects with Rule .027 of these rules.

(e) The written report of each decision of the institutional review board shall be filed in the permanent clinical record of the patient. A copy of the decision shall also be sent to the commissioner, provided, however, that all such decisions furnished the commissioner shall have deleted therefrom any and all words and figures which would directly or indirectly reveal the identity of the patient, provided further, however, that the institutional case number of the patient is not to be deemed as directly or indirectly identifying the identity of the patient. Upon receipt of a copy of such a decision, the commissioner shall inspect the decision, and, if he is satisfied that the patient's identity is not revealed thereby, he shall file and index the decision for public inspection as required by the Administrative Procedure and Texas Register Act, Vernon's Annotated Civil Statutes, Article 6252-13a.

(f) In the event that any decision of the institutional review board is not unanimous, any member of the institutional review board may prepare a written dissent stating the reason for such dissent. Such dissent shall also be filed in the patient's permanent clinical record and a copy shall be provided to the superintendent and the chairperson. A copy of the written dissent shall also be sent to the commissioner and also shall have deleted therefrom all patient-identifying information as is provided for with reference to the decision in Section (e) of this rule.

**.011. Filing of Papers.**

(a) Any instrument, document, or paper of any kind which is required or authorized by these rules to be filed with the institutional review board or with the chairperson of the institutional review board may be filed:

(1) with the superintendent; or

(2) with the commissioner.

(b) Upon receipt of any instrument, document, or other paper filed in accordance with Section (a) of this rule, the superintendent or commissioner shall immediately forward the instrument, document, or other paper to the chairperson.

**.012. Computation of Time; Extension.**

(a) In computing any period of time prescribed or allowed by these rules, by order of the institutional review board, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Unless otherwise provided by statute or by these rules, the time for the doing of any act under these rules may be extended by order of the institutional review board, upon written motion duly filed with it prior to the expiration of the applicable period of time for the doing of the same, showing that there is good cause for such extension of time and that the need therefore is not caused by neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceedings contemporaneously with the filing thereof.

**.013. Motions.** Any motion relating to a proceeding before the institutional review board shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds therefore. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with the chairperson of the institutional review board, who shall act upon the motion at the earliest practicable time.

**.014. Notice of Hearing; Waiver of Notice.**

(a) Hearings shall be held by the institutional review board after reasonable notice to the patient of not less than 10 days prior to the date of the hearing.

(b) The notice requirement of Section (a) of this rule may be waived in writing by the patient.

(c) The notice of hearing, the written waiver of notice of hearing, or both, shall be filed in the patient's clinical records.

(d) The form to be used by the institutional review board for notice of the hearing and for waiver of notice by the patient is attached to these rules as Exhibit A.

**.015. Deposition.** The taking and use of depositions in any proceeding shall be governed by Section 14 of the Administrative Procedure and Texas Register Act, Vernon's Annotated Civil Statutes, Article 6252-13a.

**.016. Subpoenas.**

(a) Following written request by a party or on its own motion, subpoenas for the attendance of a witness from any place in the State of Texas at a hearing in a pending proceeding, may be issued by the institutional review board.

(b) Motions for subpoenas to compel the production of books, papers, accounts, documents, or other physical things shall be addressed to the institutional review board, shall be verified, and shall specify as nearly as may be the books, papers, accounts or documents desired, and the material and relevant facts to be proved by them. If the matter sought is relevant, material, and necessary and will not result in harassment, imposition, undue inconvenience or expense to the party to be required to produce the same, the institutional review board may issue a subpoena, compelling production of books, papers, accounts, documents, or other physical things as deemed necessary. Such subpoenas may also be issued by the institutional review board upon its own motion.

(c) Subpoenas issued pursuant to Sections (a) and (b) of this rule shall be issued only after a showing of good cause and deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act, Vernon's Annotated Civil Statutes, Article 6252-13a.

**.017. Prepared Testimony.** In all contested cases and after service of copies upon all parties of record at such time as may be designated by the institutional review board, the prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

**.018. Conduct and Decorum.** Every party, witness, attorney, or other representative shall comport himself in all proceedings governed by these rules with proper dignity, courtesy, and respect for the patient, the department, the institutional review board, and members of the institutional review board. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the State Bar of Texas.

**.019. Rules of Evidence.** In all hearings before the institutional review board, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The institutional review board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

**.020. Documentary Evidence and Official Notice.**

(a) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the institutional review board may limit those admitted to a number which are typical and representative, and may, in its discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the institutional review board shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(b) Official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the department's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any



staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the department and its staff may be utilized in evaluating the evidence.

**.021. Formal Exceptions.** Formal exceptions to rulings of the institutional review board during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the institutional review board the action which he desires.

**.022. Limitations on Number of Witnesses.** The institutional review board shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

**.023. Offer of Proof.** When testimony is excluded by ruling of the institutional review board, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the department. The institutional review board members may ask such questions of the witness as they deem necessary to satisfy themselves that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without an offer of proof.

**.024. Right to Present Evidence and Argument; Swearing of Witnesses and Testimony Under Oath; Right to Cross-Examination; Assistance of Counsel.**

(a) The patient and his representative, if any, shall be afforded the opportunity to respond and present evidence and argument on all issues involved, and to be present at all stages of a proceeding instituted under these rules except during deliberations of the institutional review board.

(b) In connection with any hearing or proceeding held before the institutional review board, the institutional review board may swear witnesses and take their testimony under oath.

(c) In any hearing or proceeding held before the institutional review board, a party may conduct cross-examination required for a full and true disclosure of the facts.

(d) In any hearing or proceeding held before the institutional review board, all parties are entitled to the assistance of their counsel before the institutional review board; provided, however, that such assistance of counsel may be expressly waived. If the patient is not represented by counsel, the superintendent may appoint a lay person on the staff of the mental health facility not directly connected with the patient's treatment team to assist the patient at the hearing in the interest of justice. At the request of the patient, the superintendent shall appoint such lay representative.

**.025. Ex Parte Consultations.** Unless required for the disposition of *ex parte* matters authorized by law, members of the institutional review board assigned to render a decision or to make findings of fact and conclusions of law in a hearing before the institutional review board may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives except on notice and opportunity for all parties to participate. Members of the institutional review board may communicate *ex parte* with other members of the institutional review board, and pursuant to the authority provided in Ver-

non's Texas Civil Statutes, Article 6252-13a, Section 14(q), members of the institutional review board may communicate *ex parte* with employees of the department who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the department and its staff in evaluating the evidence.

**.026. Effects of Institutional Review Board Decisions.**

(a) The determination of manifest dangerousness by the institutional review board shall be final except as provided in Rule .027 of these rules.

(b) Recommendations of the institutional review board on matters other than manifest dangerousness shall be advisory only.

**.027. Final Decisions and Orders; Request for Rehearing by Superintendent or Patient; Request for New Hearing by Superintendent or Patient; Motions for Rehearing.**

(a) A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail of any decision or order. A copy of the decision shall be provided to the patient and to his counsel of record, if any.

(b) A decision is final in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law. If the institutional review board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in the case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

(c) The final decision or order must be rendered within 60 days after the date the hearing is finally closed.

(d) In the event the superintendent or the patient disagrees with the decision of the institutional review board, he may petition the deputy commissioner for a final decision. The transfer, if ordered, does not have to be stayed pending appeal.

(e) Except as provided in Section (c) of this rule, a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the chairperson of the institutional review board within 25 days after the date of rendition of the final decision or order, and the chairperson's action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If the chairperson's action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The chairperson may by written order extend the period of time for filing the motions and replies and taking action thereon, except that an extension may not extend the period for department action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order.

(f) The parties may by agreement with the institutional review board provide for a modification of the times provided in this section.

(g) A patient transferred to the Maximum Security Unit of the Rusk State Hospital under the provisions of this rule may have a hearing before the review board established by Rule 302.04.10 at any time upon recommendation of the staff of the Maximum Security Unit. A patient transferred to the Maximum Security Unit under the provisions of these rules shall have a hearing before the review board established pursuant to Rule 302.04.10 within six months of his first hearing before that review board and shall have a hearing every six months thereafter.

#### .028. The Record.

(a) The record in a case before the institutional review board shall include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the institutional review board at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the members of the institutional review board who are involved in making the decision.

(b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

#### .029. Distribution.

(a) These rules shall be distributed to all members of the Texas Board of Mental Health and Mental Retardation; assistant commissioners, deputy commissioners, directors and section chiefs of the Central Office; and superintendents and directors of all department facilities.

(b) The superintendent shall be responsible for the distribution of copies of these rules to all appropriate staff members of the facility.

(c) A copy of these rules shall be provided upon request to a patient subject to the provisions of these rules and to a patient's counsel.

.030. References. Reference is made to the following statutes and rules:

(a) Vernon's Annotated Civil Statutes, Article 6252-13a.

(b) Vernon's Annotated Civil Statutes, Article 5547-73.

(c) Rules of the Commissioner of MH/MR Affecting Client (Patient) Care; Review Board (Rusk State Hospital Maximum Security Unit) for Making a Determination of Manifest Dangerousness, 302.04.10.

#### .031. Effective Date.

(a) These rules become effective upon the expiration of 20 days from the date on which they are filed as adopted rules with the Texas Register Division of the Office of the Secretary of State.

(b) On the effective date of these rules, all other instructions, verbal or written, on this subject are rescinded.

Issued in Austin, Texas, on January 20, 1978.

Doc. No. 780524

Kenneth D. Gaver, M.D.  
Commissioner  
Texas Department of Mental Health  
and Mental Retardation

Effective Date: February 9, 1978

For further information, please call (512) 454-3761.



## Texas Parks and Wildlife Department

### Wildlife

#### Statewide Hunting, Fishing, and Trapping Proclamation No. A-5, 1977-78

127.70.01

The Texas Parks and Wildlife Commission has adopted an amendment to Rule 127.70.01.085, which is a portion of the Statewide Hunting, Fishing, and Trapping Proclamation No. A-5, 1977-78. One favorable comment was received by telephone.

The wording describing the boundaries where turkey gobblers may be taken during the spring hunting season in Newton County was changed to increase clarity. The amendment to Rule 127.70.01.085 was adopted under the authority of Section 61.053, Texas Parks and Wildlife Code, to read as follows:

#### .085. Turkey.

(h) There shall be a spring season on turkey gobblers beginning the third Saturday in April for nine consecutive days during which one gobbler may be taken only in that portion of Newton County bounded on the north by the Sabine County line, on the east by the Sabine River, on the south by State Highway 63, on the west by the intersection of State Highway 63 and the Ash-Kinzel County road, thence north-

erly on the Ash-Kinzel County road to the Weeks Chapel County road, thence northerly along the Weeks Chapel County road to the Mayflower County road, thence westerly along the Mayflower County road to the North Scrappin' Valley County road, thence north, north easterly along the North Scrappin' Valley County road to the Sabine County line.

Issued in Austin, Texas, on January 25, 1978.

Doc. No. 780812

Maurine Ray  
Administrative Assistant  
Texas Parks and Wildlife Department

Effective Date: February 14, 1978

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

## State Board of Podiatry Examiners

### Examinations 396.15.00

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

The board received no comments or suggestions for changes to the proposed rules; however, slight changes in wording were made for clarity.

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

#### .001. Definitions.

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

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

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

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

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

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

#### .002. Application for License.

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

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

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

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

tary-treasurer, at his discretion, later than 60 days before the examination.

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

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

#### .003. Qualifications of Applicants.

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

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

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

#### .004. Qualifications of Examinees.

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

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

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

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

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

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

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

(c) Examinees shall not be permitted to bring medical books, notes, medical journals, or other help into the examination room, or to communicate by word or sign with another examinee while an examination is in progress with-

out permission of the presiding examiner and within the hearing of a designated representative of the board; nor shall the examinee leave the examination room except when so permitted by the presiding examiner and accompanied by a member or an employee of the board.

(d) A license shall not be issued to any person who has been detected in a deceptive or fraudulent act while an examination is in progress. One designated representative of the board shall be in the examination room at all times while an examination is in progress.

#### **.007. Written Examination.**

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

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

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

#### **.008. Practical—Oral Examination.**

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

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

#### **.009. Grade Requirements.**

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

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

#### **.010. Re-examinations.**

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

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

#### **.011. Preparation of Questions.**

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

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

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

#### **.012. Assistance with Examinations.**

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

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

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

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

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

#### **.014. Disqualification to Take Examination.**

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

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

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

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

(e) Any applicant who is refused admittance to an examination has the right to appeal such decision in accordance with the board procedural Rules 396.30 and Articles 4570 and 6252-13a, Texas Civil Statutes.

Doc. No. 780553

## **Identification of Practice 396.20.00**

The State Board of Podiatry Examiners has amended Rule 396.20.00.005 to allow the use of the initials, "P.C.," to designate the practice of podiatry by a professional corporation.

This amendment to Rule 396.20.00.005 is adopted pursuant to the authority of Articles 4568a and 1528e, Section 8, Texas Civil Statutes.

.005. *Professional Corporations.* The name of a professional corporation created for the practice of podiatry shall include one of the following suffixes:

- (a) (Name), A Professional Corporation
- (b) (Name), A Prof. Corp.
- (c) (Name), P.C.
- (d) (Name), Incorporated
- (e) (Name), Inc.
- (f) (Name), Company
- (g) (Name), Co.

Doc. No. 780554

## Procedure Governing Grievances, Hearings, and Appeals 396.30.00

The Texas State Board of Podiatry Examiners has adopted Rules 396.30.00.001-.048, establishing procedures to follow in grievances and hearings before the board and appeals from board action.

These rules are proposed under the authority of Texas Civil Statutes, Articles 4568 and 6252-13a.

### .001. Definitions.

- (a) "Board" means the Texas State Board of Podiatry Examiners.
- (b) "Board member" means one of the appointed members of the decision-making body defined as the board.
- (c) "Secretary-treasurer" means the secretary-treasurer of the State Board of Podiatry Examiners.
- (d) "Contested case" means a proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.
- (e) "Applicant" or "petitioner" is a party seeking a license or rule from the board, or appealing any action of the board.
- (f) "Complainant" means any party who has filed a sworn written complaint with the board against any party subject to the jurisdiction of the board.
- (g) "Intervenor" means any party otherwise not defined.
- (h) "Protestant" means any party opposing an application or petition filed with the board.
- (i) "Respondent" means any party against whom any complaint has been filed.
- (j) "Party" means each person or agency named or admitted as a party.
- (k) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- (l) "Hearing officer" means one or more board members designated by the president of the board to conduct hearings.
- (m) "License" includes the whole or part of any board approval, registration, or similar form of permission required by law.
- (n) "Licensing" includes the board process respecting the granting, denial, renewal, revocation, cancellation,

suspension, annulment, withdrawal, limitation, or amendment of a license.

(o) "Pleading" means written allegations filed by parties concerning their respective claims.

(p) "Register" means the *Texas Register*.

(q) "Rule" means any board statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the board. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the board which do not affect private rights or procedures. This definition includes substantive regulations.

.002. *Scope of Rules.* These rules shall govern the procedure for the institution, conduct, and determination of all cases and proceedings before the board. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the board or the substantive rights of any person.

.003. *Filing of Documents.* All applications, petitions, complaints, motions, protests, replies, answers, notices, and other pleadings relating to any proceeding pending or to be instituted before the board shall be filed with the secretary-treasurer or other designated person. They shall be deemed filed only when actually received by him, accompanied by the filing fee, if any, required by statute or board rules.

### .004. Computation of Time.

(a) Computing time. In computing any period of time prescribed or allowed by these rules, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any pleading, except a notice of protest, may be extended by order of the secretary-treasurer or other designated person, upon written motion duly filed with him prior to the expiration of the applicable period of time for the filing of the same, showing that there is good cause for such extension of time and that the need therefor is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served by the party filing same upon all other parties of record to the proceeding, contemporaneously with the filing thereof.

.005. *Agreement to be in Writing.* No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any proceeding before the board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these rules, unless precluded by law.

### .006. Service in Nonrulemaking Proceedings.

(a) Personal service. Where personal service of notice by the board is required, the board shall mail the same, by certified or registered mail, to the last known place of address

or the last address supplied to the board of the person entitled to receive such notice.

(b) Service of pleadings. A copy of any protest, reply, answer, motion, or other pleading filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered by the party filing the same to every other party of record. If any party has appeared in the proceeding by attorney or other representative authorized under these rules to make appearances, service shall be made upon such representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the board or hearing officer striking the protest, reply, answer, motion, or other pleading from the record.

(c) Certificate of service. A certificate by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be *prima facie* evidence of such service. The following form of certificate will be sufficient in this connection: I hereby certify that I have this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, served copies of the foregoing pleading upon all other parties to this proceeding, by (here state the manner of service). Signature.

#### .007. Conduct and Decorum.

(a) Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the hearing officer, the board member(s), and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

(b) The full board may hear any case or matter or the president of the board may appoint one or more board member(s) to hear and act as fact-finder.

(c) The board or hearing officer may be assisted by counsel in conducting hearings according to these rules.

.008. Classification of Parties. Parties to proceedings before the board are applicants, protestants, petitioners, complainants, respondents, and intervenors. Regardless of errors as to designations in their pleadings, the parties shall be accorded their true status in the proceeding.

.009. Parties in Interest. Any party in interest may appear in any proceeding before the board. All appearances shall be subject to a motion to strike upon a showing that the party has no justifiable or administratively cognizable interest in the proceeding.

.010. Appearances Personally or by Representative. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of any state. Any person may appear on his own behalf. A corporation, partnership, or association may appear and be represented by any *bona fide* officer, partner, or full-time employee.

.011. Classification of Pleadings. Pleadings filed with the board through the secretary-treasurer shall be complaints, applications, petitions, answers, replies, motions for rehearing, appeals, and other motions. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

#### .012. Form of Content of Pleadings.

(a) Typewritten or printed. Pleadings shall be typewritten or printed upon paper 8-1/2 by 11 inches with a

left-hand margin at least one-inch wide and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible and are certified as true and correct copies.

(b) Content. Pleadings shall state their object, shall contain a concise statement of the facts in support of the same, and shall be signed by the applicant or his authorized agent.

(c) Signature and address. The original of every pleading shall be signed in ink by the party filing the paper or by his authorized representative. Pleadings shall contain the address of the party filing the document or the name, telephone number, and business address of the representative.

(d) Pleadings. All pleadings for which no official form is prescribed shall contain:

(1) the name of the party seeking to bring about or prevent action by the board;

(2) the names of all other known parties in interest;

(3) a concise statement of the facts relied upon by the pleader;

(4) a prayer stating the type of relief, action, or order desired by the pleader;

(5) any other matter required by statute; and,

(6) a certificate of service, as required by Rule .006(b).

(e) Filing fees. Each application, petition, or complaint which is intended to institute a proceeding before the board shall be accompanied by the filing fee, if any, prescribed by law or these rules.

.013. Examination by the Board or Hearing Officer. Upon the filing of any pleading with the board or the hearing officer, the pleading shall be examined to determine its sufficiency under these rules. If such pleading does not comply in all material respects with these rules, it will be returned to the person who filed it, along with a statement of the reasons for rejecting the same. The person who filed it, along with such pleading, shall thereafter have the right to file a corrected pleading, provided that the filing of such corrected pleading shall not be permitted to delay any hearing unless the board or the hearing officer shall determine that such delay is necessary in order to prevent injustice or to protect the public interest and welfare.

.014. Motions. Any motion relating to a pending proceeding shall, unless made during a hearing, be written and shall set forth the relief sought and the specific reasons and grounds therefor. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with the board or the hearing officer, who shall act upon the motion at the earliest practicable time.

.015. Amendments. Any pleading may be amended at any time upon motion approved or granted, provided that the application, complaint, or petition upon which notice has been issued shall not be amended so as to broaden the scope thereof or unreasonably delay the hearing.

.016. Incorporation by Reference of Board Records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the board. This rule shall not relieve any applicant of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.



**.017. Licenses.** When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the board or unless it has been terminated according to statute and rule, and, in case the application is denied or the license is in some manner limited, until the last day for seeking review of the board order or a later date when fixed by order of a reviewing court.

**.018. Contested Proceedings.**

(a) Before revoking, cancelling, or suspending any license, or denying an application for a license, or reprimanding or censoring any licensee, the board will afford all parties an opportunity for hearing after reasonable notice of not less than 10 days.

(b) Such notice shall include:

- (1) a statement of time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the matters asserted.

(c) If the board or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing.

**.019. Personal Service.** All notices of which personal service is required by law shall be addressed to the person entitled thereto, and shall set forth the names of all other parties, the nature and subject matter of the proceeding, the time and place of hearing, and any other matter required by law.

**.020. Pre-Hearing Conference.**

(a) In any proceeding, the board or the hearing officer, on its or his own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear before the board or the hearing officer at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering:

- (1) the simplification of issues;
- (2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as annual reports, to the end of avoiding the unnecessary introduction of proof;
- (3) the procedure at a hearing;
- (4) the limitation, where possible, of the number of witnesses; and
- (5) such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as in dispute.

(b) Unless precluded by law, informal dispositions may be made of any contested case by stipulation, agreed settlement, or consent order of default.

(c) Action taken at the conference shall be recorded in an appropriate order by the board or the hearing officer, unless the parties enter into a written agreement approved by the board or the hearing officer.

**.021. Motions for Postponement, Continuance, Withdrawal, or Dismissal of Applications or Other Matters before the Board.** Motions for postponement, continuance, withdrawal, or dismissal of applications or other matters which have been duly set for hearing shall be in writing, shall be filed with the board or the hearing officer, and distributed to all interested parties, over a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such actions and shall make reference to all prior motions of the same nature filed in the same proceeding. Failure to comply with the above, except for good cause shown, may be construed as lack of diligence on the part of the moving party, and at the discretion of the board or hearing officer may result in the dismissal of the application or other matter in issue, with prejudice to refiling. Once an application has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the hearing officer without the consent of all parties involved, unless the board shall have ordered such postponement or continuance.

**.022. Place and Nature of Hearing.** All hearings conducted in any proceeding shall be open to the public unless otherwise covered by statute. Hearings will be held at places designated by the board.

**.023. Presiding Officer.**

(a) Hearings will be conducted by the board or a hearing officer who shall have authority to administer oaths, to examine witnesses, and to rule upon the admissibility of evidence and amendments to pleadings. The board or hearing officer shall have the authority to recess any hearing from day to day or time to time.

(b) If the hearing officer dies, becomes disabled or withdraws, or is removed from the case at any time before the final decision thereof, the board may appoint another who may perform any remaining function without the necessity of repeating any previous proceedings in the case.

**.024. Order of Procedure.**

(a) In all proceedings the petitioner, applicant, or complainant, respectively, shall be entitled to open and close. The board or the hearing officer shall determine at what stage intervenors shall be permitted to offer evidence, if any. After all parties have completed the presentation of their evidence, the board or the hearing officer may call upon any party or the staff of the board for further material or relevant evidence upon any issue, to be presented at a future further hearing after notice to all parties of record, which notice may be announced during such hearing.

(b) The board or hearing officer shall direct all parties to enter their appearances on the record. If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the date of the hearing, they shall be heard; otherwise not. If exceptions are sustained, amendments may be allowed provided the hearing is not delayed, subject to the provisions of Rule .015.

**.025. Reporters and Transcript.**

(a) The board may grant a party's written request that proceedings be transcribed. The cost of the original transcript shall be assessed to the party requesting the transcript and the original copy of the transcript shall be delivered to the board.



(b) A stenographic reporter may sell a copy of a transcript if the stenographic reporter first submits a written request to the board containing:

- (1) the full name and address of the party requesting the copy;
- (2) the number of pages in the transcript; and
- (3) the cost of the copy to the party.

Upon approval of the request by the board or the hearing officer, the stenographic reporter shall furnish a copy to the requesting party at not more than 30 cents per page plus the cost of postage, if any. The board may exclude any stenographic reporter for late delivery or poor workmanship in previous hearings.

(c) Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the board or hearing officer shall submit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the board or hearing officer. If suggested corrections are not objected to, the board or the hearing officer will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the board or the hearing officer, who shall then determine the manner in which the record shall be changed, if at all.

**.026. Formal Exceptions.** Formal exceptions to rulings of the board or the hearing officer during a hearing shall be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the board or the hearing officer the action which he desires; however, all exceptions shall be reduced to writing by the party making same and filed with the board or hearing examiner before the hearing is closed or concluded.

**.027. Dismissal Without Hearing.** The board or the hearing officer may entertain motions for dismissal without a hearing for the following reasons: failure to prosecute; unnecessary duplication of proceedings or *res adjudicata*; withdrawal; moot questions or stale petitions; or lack of jurisdiction.

**.028. Rules of Evidence.** In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The board or hearing examiner shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

**.029. Documentary Evidence and Official Notice.**

(a) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the board or the hearing officer may limit those admitted to a number which are typical and representative, and may, in its or his own discretion, require the abstracting of

the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement, the board or the hearing officer shall require that all parties of record or their representative be given the right to examine the documents from which such abstracts were made.

(b) Official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the board's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the board and its staff may be utilized in evaluating the evidence.

**.030. Prepared Testimony.** In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the board or the hearing officer, the prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

**.031. Limitations on Number of Witnesses.** The board or the hearing officer shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

**.032. Exhibits.**

(a) Form. Exhibits of documentary character shall be of such size, as set forth in Rule .012, as not to unduly encumber the files and records of the board. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) Tender and service. The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to the hearing officer, and one copy to each other party of record or his attorney or representative.

(c) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, the board or the hearing officer shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the board or the hearing officer with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) After hearing. Unless specifically directed by the board or the hearing officer, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the board allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

**.033. Offer of Proof.** When testimony is excluded by ruling of the board or the hearing officer, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed

testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The members of the board or the hearing officer may ask such questions of the witness as is necessary to determine whether the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

**.034. Depositions, Subpoenas, and Discovery.** The taking and use of depositions, the issuing of subpoenas, and other discovery methods shall be governed by the Administrative Procedure and Texas Register Act, Sections 14 and 14a.

**.035. Proposals for Decision.**

(a) If, in a contested case, a majority of the members of the board who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the board itself, may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs to the members of the board who are to render the decision. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. The proposal for decision must contain a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision prepared by the person who conducted the hearing or by one who has read the record. The proposal for decision may be amended pursuant to exceptions, replies, or briefs submitted by the parties without again being served on the parties. The parties, by written stipulation, may waive compliance with this section.

(b) When a proposal for decision is prepared, a copy of the proposal shall be served forthwith on each party or his attorney of record. Upon the expiration of the 20th day following the time provided for the filing of exceptions and briefs in Rule .036, the proposal for decision may be adopted by written order of the board, unless exceptions and briefs shall have been filed in the manner required in Rule .036. The hearing officer may direct a party to draft and submit a proposal for decision which shall include proposed findings of fact and a concise and explicit statement of the underlying facts supporting such proposed findings developed from the record.

**.036. Filing of Exceptions, Briefs, and Replies.** Any party of record may, within 20 days after the date of service of a proposal for decision, file exceptions and briefs to the proposal for decision, and replies to such exceptions and briefs may be filed within 15 days after the date for filing of such exceptions and briefs. A request for extension of time within which to file exceptions, briefs, or replies shall be filed with the hearing officer, and a copy thereof shall be served on all other parties of record by the party making such request. The hearing officer shall promptly notify the parties of his action upon the same and shall allow additional time only in extraordinary circumstances where the interest of justice so requires.

**.037. Form and Content of Briefs, Exceptions, and Replies.** Briefs, exceptions, and replies shall be of such size and conform, as near as possible, to the form of pleadings as set forth in Rule .012, (a) and (c). The points involved shall be concisely stated. The evidence in support of each point shall be abstracted or summarized, and/or briefly stated in the form

of proposed findings of fact. Complete citations to the page number of the record or exhibit referring to evidence shall be made. The specific purpose for which the evidence is relied upon shall be stated. The argument and authorities shall be organized and directed to each point properly proposed as a finding of fact in a concise and logical manner. Briefs shall contain a table of contents and authorities. Briefs, prior to the issuance of a proposal for decision, may be filed only when requested or permitted by the board or the hearing officer.

**.038. Oral Argument.** Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the board. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings.

**.039. Final Decisions and Orders.** All final decisions and orders of the board shall be in writing and shall be signed by a majority of the board members. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact must be based explicitly on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with board rules, a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified, either personally or by mail, of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

**.040. Administrative Finality.** A decision is final in the absence of a timely motion for rehearing and is final on the date of rendition of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law. The board may rule on a motion for rehearing at a meeting or by mail, telephone, telegraph, or other suitable means of communication. If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

**.041. Motions for Rehearing.** A motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the board within 25 days after the date of rendition of the final decision or order, and board action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The board may, by written order, extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period for board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The

parties may by agreement, with the approval of the board, provide for a modification of the times provided in this section.

**.042. Rendering of Final Decision or Order.** The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by a hearing officer, the hearing officer may prescribe a longer period of time within which the final order or decision of the board shall be issued. The extension, if so prescribed, shall be announced at the conclusion of the hearing.

**.043. Appeal.** Any person whose license to practice podiatry has been cancelled, revoked, or suspended by order of the board may appeal to any district court having jurisdiction and venue in the county of his residence.

**.044. The Record.**

(a) The record in a contested case shall include, where applicable:

- (1) all pleadings, motions, intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the hearing officer and the board; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or the board.

(b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

**.045. Show Cause Orders and Complaints.**

(a) The board, either on its own motion or upon receipt of sufficient written complaint, may, in its sound discretion, at any time after notice to all interested parties, including personal service upon the licensee, cite any person operating under its jurisdiction to appear before it in a public hearing and require him to show cause why his license or certificate or other authority should not be revoked, cancelled, suspended, limited, amended, or why such person should not be reprimanded or censured, or why such other action available to the board not be taken, for the failure to comply with any applicable statute, or the rules, regulations, or orders of the board, or for failure to abide by the terms and provisions of the license itself. All hearings in such proceedings shall be conducted in accordance with the provisions of these rules.

(b) No revocation, cancellation, suspension, limitation, or withdrawal of any license or certificate or other authority is effective unless, prior to the institution of board proceedings, the board gives notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee is given an opportunity to show compliance with all requirements of law for the retention of the license.

**.046. Ex-Parte Consultations.** Unless required for the disposition of *ex-parte* matters authorized by law, members or employees of the board assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. A board member may communicate *ex parte* with other members of the board.

Members or employees of the board assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate *ex parte* with employees of the board who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the board and its staff in evaluating the evidence.

**.048. Amendments to Rules.**

(a) Prior to the adoption of any rule, the board shall give at least 30 days' notice of its intended action. Notice of the proposed rule shall be filed with the secretary of state and published by the secretary of state in the *Texas Register*. The notice shall include:

- (1) a brief explanation of the proposed rule;
- (2) a statement of the statutory or other authority under which the rule is proposed to be promulgated;
- (3) a fiscal note stating the fiscal implications of the proposed rule to the state and to units of local government;
- (4) a request for comments on the proposed rule from any interested person; and
- (5) any other statement required by law.

(b) Each notice of a proposed rule becomes effective as notice when published in the *Register*. The notice shall be mailed to all persons who have made timely written requests of the board for advance notice of its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

(c) Prior to the adoption of any rule, the board shall afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for public hearing shall be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. The board shall consider all written or oral submissions concerning the proposed rule. On adoption of a rule, the board, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement its reasons for overruling the considerations urged against its adoption.

(d) If the board finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule on fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing that it finds practicable to adopt an emergency rule. Such an emergency rule or regulation or amendment(s) to any of the board's rules or regulations may be instigated by one board member, and such member may conduct a poll by mail or telephone and arrive at a decision when the majority of the board finds that such an emergency rule, regulation, or amendment(s) needs to be adopted. The rule may be effective for a period of not longer than 120 days, renewable once for a period not exceeding 60 days, but the adoption of an identical rule under Sections (a) and (c) of this rule is not precluded. An emergency rule adopted under the provisions for this section, and the board's written reasons for the adoption, shall be filed in the Office of the Secretary of State for publication in the *Texas Register*.

(e) The board may use informal conferences and consultations as means of obtaining the viewpoints and advice of interested persons concerning contemplated rulemaking. The board also may appoint a committee of experts or in-

interested persons or representatives of the general public to advise it with respect to any contemplated rulemaking. The powers of these committees are advisory only.

(f) Any interested person may petition the board requesting the adoption of a rule. At the board's next meeting, after submission of a petition, the board shall either deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with the provisions of this rule or may schedule hearings to determine the necessity of such requested rule.

Issued in Waco, Texas, on January 23, 1978.

Doc. No. 780555      Joe C. Littrell, D.P.M.  
                              Secretary-Treasurer  
                              State Board of Podiatry Examiners

Effective Date: February 12, 1978

For further information, please call (512) 476-6331.

## Texas Department of Water Resources

### Private Sewage Facility Regulations

#### Sam Rayburn Reservoir 157.31.12

The Texas Water Commission and the Texas Water Development Board, on behalf of the Texas Department of Water Resources, have adopted Rules 157.31.12.001-.015 concerning the establishment of a regulated zone around Sam Rayburn Reservoir; promulgating rules and regulations for the control of sewage within the area which is not disposed of in organized disposal systems; providing for licensing of private sewage facilities; and designating the Angelina and Neches River Authority to perform the licensing, regulation, and enforcement functions related to the rules and regulations set forth herein.

The Texas Water Quality Board, a predecessor agency to the Texas Department of Water Resources, adopted Rules 130.12.12.002-.014 concerning the regulation of private sewage facilities within a regulated zone around Sam Rayburn Reservoir. These rules adopt the substantive provisions of Texas Water Quality Board Rules 130.12.12.002-.014, with changes made in nomenclature, lot size requirements, and the approved fee schedule. Rule .013 has been added concerning enforcement of this subchapter.

The rules, as adopted, will have no known fiscal implications. Any costs to state and local governments for implementation will be financed by license fees provided in these rules.

Comments regarding these proposed private sewage facility regulations were invited and directed to Larry R. Soward, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-1311. These rules, as well as any comments received, were presented to the Texas Water Commission and the Texas Water Development Board for adoption no less than 30 days after publication.

Copies of these rules may be examined in or obtained from the Texas Water Commission. Copies may also be examined in the Office of the Secretary of State, Texas Register Division.

In 1947, the United States Army Corps of Engineers initiated the construction of the Sam Rayburn Dam, located approximately 10 miles northwest of the City of Jasper, with the cooperation of the Lower Neches Valley Authority. In 1955, the dam was constructed and the Sam Rayburn Reservoir created. The reservoir holds approximately 1,148,900 acre-feet of water and covers an area of some 141,300 acres. The water is used both as a water supply reservoir and for recreational activities. Both of these purposes require maintenance of water quality in the reservoir equal to, or in excess of, the water quality standards for this portion of the Angelina River as adopted by the Texas Department of Water Resources.

Among the potential sources of water pollution which must be controlled in order to maintain these standards of water quality is the disposal of sewage from individual dwellings, subdivisions, motels, marinas, and other such developments surrounding the reservoir. This subchapter is primarily concerned with sewage discharged into private sewage facilities. Sewage discharged into organized waste collection, treatment, and disposal systems is regulated through the permit system of the department. The regulation of sewage discharged into private sewage facilities is of special concern because the area surrounding Sam Rayburn Reservoir is expected to increase rapidly in population density.

These rules are promulgated under the authority of the Texas Water Code, Section 26.031.

#### .001. Definitions.

(a) "Authority" means the Angelina and Neches River Authority.

(b) "Commission" means the Texas Water Commission.

(c) "Department" means the Texas Department of Water Resources.

(d) "Board" means the Texas Water Development Board.

(e) "Executive director" means the executive director of the Texas Department of Water Resources.

(f) "Sam Rayburn Reservoir" means the lake and reservoir located on the Angelina River approximately 10 miles northwest of the City of Jasper, Texas.

(g) "Organized disposal system" means any public or private system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a permit from the Texas Water Commission.

(h) "Private sewage facilities" means all facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the commission.

(i) "Sewage" means waterborne human or other domestic waste.

(j) "Subdivision" means

(1) a subdivision which has been platted and recorded with the county clerk of the county or counties in which the land lies, or which is required by statute to be so platted and recorded; or

(2) any land divided or proposed to be divided into one or more lots or tracts, any of which is one acre or less in size.

(k) "Take line" means the limit of land acquisition for the Sam Rayburn Reservoir.

.002. *Regulated Zone.* The regulated zone is the zone for which regulations of this subchapter apply. It is a zone in the

State of Texas surrounding Sam Rayburn Reservoir lying between the take line and a line parallel to it 2,000 feet from the take line.

**.003. Regulations Controlling the Discharge of Sewage Within the Regulated Zone.** All sewage disposal shall be in accordance with one of the following types of authorizations:

(a) Sewage discharged into an organized waste disposal system operating under a valid permit issued by the commission.

(b) Sewage discharged into a private sewage facility licensed in accordance with the regulations contained in this subchapter.

(c) Sewage discharged into a private sewage facility registered in accordance with the regulations contained in Texas Water Quality Board Rules 130.12.12.002-.014.

**.004. Licensing Function.**

(a) The Angelina and Neches River Authority is designated by the commission to perform all of the licensing functions of this subchapter.

(1) The authority shall have the following powers:

(A) To make reasonable inspections of all private sewage facilities located or to be located within the area covered by this subchapter.

(B) To collect all fees set by the board necessary to recover all the costs incurred in meeting the requirements of this subchapter.

(2) The authority shall have the following responsibilities:

(A) To make semiannual reports to the executive director on all actions taken concerning this subchapter.

(B) To perform all the duties necessary to meet the requirements of this subchapter.

(b) Upon a showing of necessity, the commission may assume all of the powers and responsibilities delegated to the authority by this subchapter.

**.005. Licensing Requirements for New Private Sewage Facilities.**

(a) Private sewage facilities to be located within the boundaries of the regulated zone, or to be located within a subdivision existing prior to March 15, 1972, in the regulated zone, must meet the following requirements:

(1) The private sewage facility must conform to the minimum standards set out by the Texas Department of Health.

(2) A license must be obtained for the use of these facilities from the authority.

(3) The lot or tract in question must be large enough, considering the soil and drainage conditions and probable volume of sewage to be disposed of, to permit the use of a private sewage facility without causing water pollution, nuisance conditions, or danger to public health.

(b) A new subdivision to be developed within the regulated zone on or after March 15, 1972, and utilizing private sewage facilities, must meet the following requirements:

(1) The private sewage facility must conform to the minimum standards set out by the Texas Department of Health.

(2) A license must be obtained for the private sewage facility from the authority.

(3) The lot or tract in the subdivision must be at least 15,000 square feet in size if the percolation rate is 30 m.p.i. (minutes per inch) or less; one-half acre in size if the percola-

tion rate is greater than 30 m.p.i. but 60 m.p.i. or less; at least one acre in size if the percolation rate is greater than 60 m.p.i.

(c) Terms of licenses for new private sewage facilities.

(1) Any license issued under the authority of this subchapter will be transferred to a succeeding owner and such license will continue in existence for the unexpired term of the license provided the new owner applied to the authority, and provided there is no significant change in amount or quality of waste to be placed in the private sewage facility. The authority will charge a transfer fee whenever a license is transferred to a succeeding owner.

(2) Application forms for licenses may be obtained from the authority or from the offices of the judges of Angelina, Jasper, Sabine, San Augustine, and Nacogdoches Counties. In order to initiate an application for a license, the completed application form, together with the appropriate fee, shall be filed with the authority.

(3) The authority will perform such inspections and tests as may be deemed necessary as soon as practicable.

(4) Upon a finding by the authority that use of the private sewage facility will not cause pollution or injury to the public health and is not in conflict with the terms and regulations of this subchapter:

(A) A license effective for a term of 10 years will be issued. At the end of five years, the system will be reinspected and an inspection fee assessed.

(B) A new license issued under the above terms may be renewed for successive terms of 10 years.

(5) Upon a finding by the authority that the private sewage facility will not be licensed, the applicant shall be notified in writing of that finding and of the faults which prevent licensing.

**.006. Approval of Subdivision Plans for Private Sewage Facilities.**

(a) Any developer or other interested person desiring to create a subdivision using private sewage facilities must obtain approval from the authority of his plans for sewage disposal. He must fulfill the following requirements:

(1) An application for approval of the subdivision sewage disposal plan and appropriate filing fee shall be submitted to the authority.

(2) The developer shall inform each prospective buyer:

(A) that the subdivision is subject to all of the terms and conditions of this subchapter;

(B) that a license will be required for any private sewage facility constructed in the subdivision;

(C) that a sewage disposal plan has been filed for the subdivision and that the areas suitable for private sewage facilities have been defined.

(3) If investigation pursuant to this section reveals that a lot is not suitable for use of private sewage facilities, the prospective buyer shall be so notified.

(b) The authority will perform necessary tests and inspections to determine whether the subdivision can be served with private sewage facilities. By agreement between the authority and the developer, all or part of the tests may be performed by an engineering firm or soils testing laboratory approved by the authority. The authority will notify the developer of the findings of its examination and will point out any deficiencies in the plan for sewage disposal. Specifically, the authority will notify the developer of any areas not suitable for private sewage facilities.

ble for the use of private sewage facilities and whether the proposed developmental density is consistent with the use of private sewage facilities. Approval of a subdivision plan for sewage disposal does not constitute a license for a specific private sewage facility. An approved plan is, however, a prerequisite for obtaining a private sewage facility license in a subdivision.

*.007. Existing Private Sewage Facilities.*

(a) All private sewage facilities existing within the regulated zone should now be licensed or registered pursuant to Texas Water Quality Board Rules 130.12.12.002-.014. Licenses and registrations issued under the previous rules will remain in effect for the term stated thereon as if issued under this subchapter.

(b) A registration issued under the authority of Texas Water Quality Board Rules 130.12.12.002-.014 will be transferred to a succeeding owner and such registration will continue in existence provided the new owner applies to the authority.

(c) Registration issued under the authority of Texas Water Quality Board Rules 130.12.12.002-.014 will not bar any action to abate a nuisance as defined in Article 4477-1, Vernon's Texas Civil Statutes. If a registered system is found to be malfunctioning, the authority may require licensing in accordance with Rule .005.

*.008. Connection of Private Sewage Facilities to Organized Waste Collection, Treatment, and Disposal Systems.* In order to implement the stated policy of the legislature and the department that the development and use by interested and affected parties of organized waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of water in the state should be encouraged, the commission makes the following requirements:

(a) No license shall be issued for any private sewage facility when any part of that facility is closer than 300 feet in horizontal distance to an organized waste collection, treatment, and disposal system; rather, the facility shall be connected to the organized system whenever feasible and legally possible.

(b) Whenever an organized waste collection, treatment, and disposal system is developed to within 300 feet in horizontal distance from any part of a private sewage facility, licensed or not, that facility shall be connected to the organized system whenever feasible and legally possible.

*.009. Terms and Conditions for Granting Exceptions.* The commission intends that the regulations contained in this subchapter shall be strictly enforced, but realizes that certain individual situations may require the granting of an exception to the requirements contained in the subchapter so that hardships may be avoided. Therefore, the following terms and conditions are established:

(a) Any person desiring an exception shall file an application with the authority for its analyses of the specifics of the situation.

(b) The authority shall review the application and issue a statement either granting or denying the application. When an application is denied, the statement shall set out the reasons for the authority's decision.

*.010. Terms and Conditions for Appeal to the Executive Director and the Commission.* Any person aggrieved by an action or decision of the authority may appeal to the executive

director of the Texas Department of Water Resources, and then to the Texas Water Commission, if the following terms and conditions are met:

(a) All of the appropriate steps required of the aggrieved person by the terms and conditions of this subchapter have been met.

(b) The aggrieved person has made a conscientious effort to resolve his problem with the authority.

*.011. Cooperative Agreement.* The authority and the executive director may execute a cooperative agreement pursuant to Chapter 26 of the Texas Water Code, providing for the performance by the authority of the water quality management, inspection, and enforcement functions required to be performed by the authority under this subchapter.

*.012. License Fees.* License fees, inspection fees, transfer fees, and renewal fees will be in accordance with Rule .015 of this subchapter. These fees shall be paid to and collected by the authority so long as the authority is delegated the licensing function and the administration of the licensing system specified in this subchapter. The establishment of the fee schedule does not impair or prohibit the imposition of reasonable charges by the authority for special services performed by the authority at the request of the applicant in connection with presentation of an application and required data. Percolation tests and other examinations will be performed by the authority on a cost basis. These tests may also be performed by engineering firms or soils testing laboratories approved by the authority.

*.013. Enforcement of This Subchapter.*

(a) Criminal penalty (Texas Water Code, Section 26.214).

(1) A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day that a violation occurs constitutes a separate offense.

(2) Jurisdiction for prosecution of a suit under this section is in the justice of the peace courts.

(3) Venue for prosecution of a suit under this section is in the justice of the peace precinct in which the violation is alleged to have occurred.

(b) A person who violates any provision of this subchapter is subject to an injunction by court order and to a civil penalty for each act of violation and for each day of violation, to be recovered as provided in Chapter 26 of the Texas Water Code.

*.014. Severability Clause.* If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the subchapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

*.015. Fee Schedule.* The following represents the approved fee schedule for the private sewage facilities regulatory program around Sam Rayburn Reservoir:

(a) Fees regarding dwellings:

(1) Process applications for existing systems—\$25; field inspection of existing systems—\$32; total for existing system—\$57.

(2) Reinspection of systems—\$25.



(3) Perform percolation test for modification of system—\$95; field inspection for modification of system—\$25; total for modification of system—\$120.

(4) Process application for new absorption-type system—\$25; perform percolation test for new absorption-type system—\$95; field inspection for new absorption-type system—\$50; total for new absorption-type system—\$170.

(5) Process application for new evaporative-type system—\$25; field inspection for new evaporative-type system—\$75; total for new evaporative-type system—\$100.

(b) Fees regarding new installation or modification of commercial systems:

(1) Perform percolation test for any commercial system—\$95 per each test performed.

(2) Process application for proposed first new system—\$25 plus \$7.50 for each additional system; field inspection—\$50 for proposed first new system plus \$10 for each additional system.

(3) Field inspection for modification of commercial system—\$25 for first system plus \$7.50 for each additional system.

(c) Fees regarding existing commercial systems:

(1) Installations which produce sewage effluent approximately the same as an average residential system and serves a building which has no more than four commodes and lavatories plus one kitchen used for domestic purposes only and which has a maximum of two septic systems: inspection fee—\$32 and license fee—\$25.

(2) The fees listed below apply to all of the following categories of installations:

(A) Gasoline stations, restaurants, and washaterias, either singly or in combinations, which discharge effluents from any source in addition to any commodes and lavatories located within such establishments.

(B) Motels, lodges, fishing camps, groups of trailers for overnight rental, and other rental accommodations, but not including any other on-the-site facilities producing sewage effluent (such as owner's separate living quarters, cafe, bait house, marina/boat, etc.), each of which will require separate applications.

(C) Marinas, boat docks, bait houses, fish cleaning facilities, and the like, owned and operated separately from other commercial facilities.

(D) Public schools and private schools which are not included in a church encampment:

(i) Inspection fee—\$40 for first system plus \$7.50 for each additional system.

(ii) License fee—\$25 for first system plus \$7.50 for each additional system.

(3) Group-use facilities, including homes of management and caretaker personnel, and also commodes, lavatories, group cooking facilities, dishwashing, and laundries located on the property, as well as other pollutant sources such as boat docks, fish cleaning facilities, etc., at the same location:

(A) Inspection fee—\$40 for first system plus \$10 for each additional system.

(B) License fee—\$25 for first system plus \$7.50 for each additional system.

(4) Residences located at such group facilities which are either owned by private individuals or rented from the central organization, but not including management or caretaker personnel, shall require a separate application for each such dwelling: inspection fee—\$32 per system and

license fee—\$25 per system. Applications requesting the designation of any one of the above fees will be subject to review, and if investigation shows that the fees paid were not correct, then applicant will either receive a refund or be required to pay any deficit.

(d) Change of ownership license—\$5.

(e) Subdivision plan approval—\$25 cost of investigation.

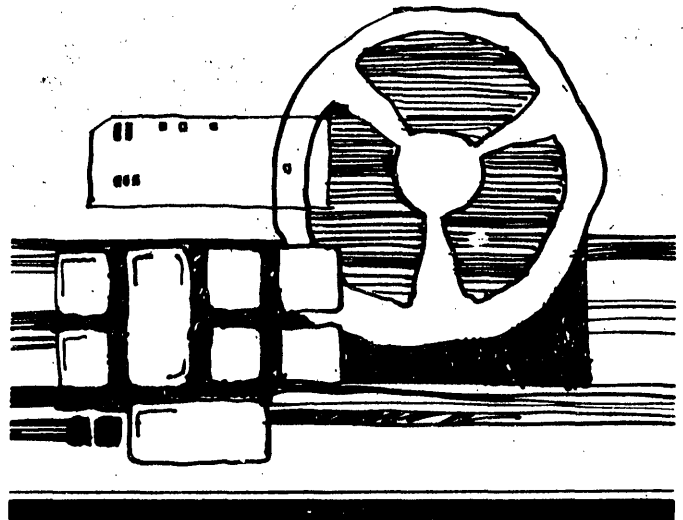
Issued in Austin, Texas, on January 23, 1978.

Doc. No: 780582

Mary Ann Hefner  
Chief Clerk  
Texas Water Commission

Proposed Date of Adoption: February 13, 1978

For further information, please call (512) 475-1311.



## Mackenzie Reservoir 157.31.24

The Texas Water Commission and the Texas Water Development Board, on behalf of the Texas Department of Water Resources, have adopted Rules 157.31.24.001-014 concerning the establishment of a regulated area around Mackenzie Reservoir; promulgating rules and regulations for the control of sewage within the area which is not disposed of in organized disposal systems; providing for licensing of private sewage facilities; and designating the Mackenzie Municipal Water Authority to perform the licensing, regulation, and enforcement functions related to the rules and regulations set forth herein.

A public hearing was held on October 25, 1977, in order to receive testimony and evidence which was relevant and material to the adoption of this private sewage facility regulation.

The rules as adopted will have no known fiscal implications. Any costs to state and local governments for implementation will be financed by license fees provided in these proposed rules.



These rules, as well as any comments received, were presented to the Texas Water Commission and the Texas Water Development Board for adoption no less than 30 days after publication.

Copies of these rules may be examined in or obtained from the Texas Water Commission. Copies may also be examined in the Office of the Secretary of State, Texas Register Division.

Mackenzie Reservoir is located approximately 12 miles northwest of the City of Silverton, Texas, on Tule Creek in Briscoe and Swisher Counties. The lake was built to provide water for the cities of Tulia, Silverton, Lockney, and Floydada, and is also utilized for recreation.

Among the potential sources of water pollution which must be controlled in order to maintain high standards of water quality is the disposal of sewage from individual dwellings, motels, marinas, and other such developments surrounding the reservoir. Sewage discharged into organized waste collection, treatment, and disposal systems is regulated through the permit system of the department. This regulation and control is needed to protect the quality of the waters of Mackenzie Reservoir.

The rules are promulgated under the authority of the Texas Water Code, Section 26.031.

#### 001. Definitions.

(a) "Authority" means the Mackenzie Municipal Water Authority.

(b) "Commission" means the Texas Water Commission.

(c) "Department" means the Texas Department of Water Resources.

(d) "Executive director" means the executive director of the Texas Department of Water Resources.

(e) "Mackenzie Reservoir" means the lake on Tule Creek in Briscoe and Swisher Counties, approximately 12 miles northwest of the City of Silverton.

(f) "Sewage" means waterborne human or other domestic waste.

(g) "Organized disposal system" means any public or private system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a permit from the Texas Water Commission.

(h) "Private sewage facility" means all facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the Texas Water Commission.

(i) "Holding tank" means a vented, watertight tank designed for holding.

(j) "Subdivision" means (1) a subdivision which has been platted and recorded with the county clerk of the county or counties in which the land lies, or which is required by statute to be so platted and recorded; or (2) any four or more adjoining lots or tracts, each of which is less than two acres in size.

(k) "MSL" is an abbreviation for mean sea level.

002. *Regulated Area.* The regulated area is the area for which this regulation applies. This area is defined as all the area in Mackenzie Reservoir Watershed bounded by a line with all points on that line being a distance of 1,500 feet from the nearest point on the 3,120-foot msl contour line, measured horizontally away from the reservoir. The regulated area also includes all the area of the lake bed to the 3,120-foot msl contour line, and all islands.

003. *Regulations Controlling the Discharge of Sewage within the Regulated Area.* All sewage disposal within the regulated area shall be in accordance with one of the following types of authorization:

(a) Sewage discharged into an organized waste disposal system or other facility operating under a valid permit issued by the Texas Water Commission.

(b) Sewage discharged into private sewage facilities licensed in accordance with the regulations contained in this subchapter; or, sewage discharged into an alternate type of private sewage facility which meets the standards of the Texas Department of Health and is licensed by the authority.

004. *Licensing Functions.* The Mackenzie Municipal Water Authority is designated by the Texas Water Commission to perform all licensing functions of this subchapter. The authority shall have the following powers:

(a) to make reasonable inspections of all private sewage facilities located or to be located within the area covered by this subchapter; and

(b) to perform all the duties necessary to meet the requirements of this subchapter.

005. *Licensing Requirements for New Private Sewage Facilities.*

(a) Private sewage facilities installed after February 28, 1978, or private sewage facilities which are substantially or materially altered to be located within the boundaries of the regulated area, must meet the following requirements:

(1) A license must be obtained for the construction of these facilities from the authority.

(2) The lot or tract which the private sewage facilities will serve must be at least 15,000 square feet in size.

(b) All private sewage facilities to be installed or constructed after February 28, 1978, should conform to the minimum standards for private sewage facilities as set out by the Texas Department of Health.

(c) Terms for license of new private sewage facilities.

(1) Any license issued under the authority of this subchapter will be transferred to a succeeding owner and such license will continue in existence, provided the new owner applies to the authority and provided there is no significant change in the amount or quality of waste to be placed in the private sewage facility. The authority will charge a transfer fee whenever a license is transferred to a succeeding owner.

(2) Application forms for licenses may be obtained from the authority. In order to initiate an application, a completed application form together with the appropriate fee shall be filed with the authority.

(3) The authority will cause to be performed such inspections and tests as may be deemed necessary as soon as practicable.

(4) Upon a finding by the authority that use of the private sewage facility will not cause pollution or injury to the public health and is not in conflict with the terms and regulations of this subchapter, a license will be issued.

(5) Upon a finding by the authority that the private sewage facility will not be licensed, the applicant shall be notified in writing of that finding and of the nature of the faults which prevent licensing.

**.008. Approval of Subdivision Plans for Private Sewage Facilities.**

(a) Any developer or other interested person desiring to create a subdivision using private sewage facilities must obtain approval from the authority of his plan for sewage disposal. He must fulfill the following requirements:

(1) A plat of the proposed subdivision must be filed with, approved by, and recorded by the county commissioners court of the county in which it is located.

(2) An application for approval of the subdivision sewage disposal plan and appropriate filing fee shall be submitted to the authority.

(3) The developer shall inform each prospective buyer:

(A) that the subdivision is subject to all of the terms and conditions of this subchapter;

(B) that a license will be required for any private sewage facility constructed in the subdivision; and

(C) that a sewage disposal plan has been filed for the subdivision and that the areas suitable for private sewage facilities have been defined.

(4) If investigation pursuant to this section reveals that a lot is not suitable for use of private sewage facilities, the prospective buyer shall be so notified.

(b) The authority will cause to be prepared a percolation test profile of the entire subdivision, consisting of percolation tests of a representative number of proposed lots or tracts (as determined and approved by the authority) to determine whether the subdivision can be served with private sewage facilities, such tests to be at the expense of the developer.

(c) By direction of the authority, all or part of the tests may be performed by an engineering firm or soils testing laboratory approved by the authority. The authority will notify the developer of the findings of its examination and will point out any deficiencies in the plan for sewage disposal. Specifically, the authority will notify the developer of any areas not suitable for use of private sewage facilities and whether the proposed developmental density is consistent with the use of private sewage facilities. Approval of a subdivision plan for sewage disposal does not constitute a license for a specific private sewage facility. An approved plan is, however, a prerequisite for obtaining a private sewage facility license in a subdivision.

**.007. Connection of Private Sewage Facilities to Organized Waste Collection, Treatment, and Disposal Systems.** In order to implement the stated policy of the legislature and the department that the development and use by interested and affected parties of organized waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state should be encouraged, the Texas Water Commission makes the following requirements:

(a) No license shall be issued for any private sewage facility when any part of the facility is closer than 300 feet in horizontal distance to an organized waste collection, treatment, and disposal system capable of serving in lieu thereof; rather, the facility shall be connected to the organized system whenever feasible and legally possible.

(b) Whenever an organized system with service capability is developed within 300 feet in horizontal distance from any part of a private sewage facility, that facility shall

be connected to the organized system whenever feasible and legally possible.

**.008. Terms and Conditions for Granting Exceptions.** The Texas Water Commission intends that the regulations contained in this subchapter shall be enforced but realizes that certain individual situations may require the granting of an exception to the requirements contained in the subchapter so that hardships may be avoided. Therefore, the following terms and conditions are established:

(a) Any person desiring an exception shall file an application with the authority for its analyses of the specifics of the situation.

(b) The authority shall review the application and issue a statement either granting or denying the application. When an application is denied, the statement shall set out the reasons for the authority's decision and may also set out what constructive measures, if any, should be undertaken to obtain licensure.

**.009. Terms and Conditions for Appeal.** Any person aggrieved by an action or decision of the authority may appeal to the executive director of the Texas Department of Water Resources, and then to the Texas Water Commission, if the following terms and conditions are met:

(a) All of the appropriate steps required by the aggrieved person by the terms and conditions of this subchapter have been met.

(b) The aggrieved person has made a conscientious effort to resolve his problem with the authority.

**.010. Cooperative Agreement.** The authority and the executive director may execute a cooperative agreement pursuant to Chapter 26 of the Texas Water Code, providing for the performance by the authority of the water quality management, inspection, and enforcement functions required to be performed by the authority under this subchapter.

**.011. License Fees.** License fees will be in accordance with Rule 614 of this subchapter. These fees shall be paid to and collected by the authority so long as the authority is delegated the licensing function and the administration of the licensing system functions specified in this subchapter. The establishment of the fee schedule does not impair or prohibit the imposition of reasonable charges by the authority for special services performed by the authority at the request of the applicant in connection with presentation of an application and the required data. Percolation tests and other examinations will be performed by engineering firms or soil testing laboratories approved by the authority.

**.012. Enforcement of this Subchapter.**

(a) Criminal penalty, Texas Water Code, Section 26.214.

(1) A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day that a violation occurs constitutes a separate offense.

(2) Jurisdiction for prosecution of a suit under this section is in the justice of the peace courts.

(3) Venue for prosecution of a suit under this section is in the justice of the peace precinct in which the violation is alleged to have occurred.

(b) A person who violates any provision of this subchapter is subject to an injunction by court order and to a civil penalty for each act of violation and for each day of violation, to be recovered as provided in Chapter 26 of the Texas Water Code.

.013. *Severability Clause.* If any provision of this subchapter or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the subchapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

.014. *Fee Schedule.* The following represents the approved fee schedule for the private sewage facilities regulatory program around Mackenzie Reservoir:

Application and inspection fee.....	\$25
Percolation test.....	\$50
Transfer fee.....	\$25

Issued in Austin, Texas, on January 23, 1977.

Doc. No. 780593

Bruce Bigelow  
General Counsel  
Texas Department of Water  
Resources

Effective Date: February 13, 1978

For further information, please call (512) 475-1311.

This section includes summarized opinions in cases on appeal from administrative decisions of local, state, and federal governments and agencies. The section contains opinions of the U.S. Supreme Court, U.S. Circuit Courts of Appeals, U.S. District Courts, the Texas Supreme Court, and Texas Courts of Civil Appeals. Selected opinions of particular importance dealing with other than administrative appeals may also be included here from time to time. State court opinions are cited in the *Texas Lawyers' Weekly Digest*. Opinions from federal courts are cited in *The United States Law Week*.

## 1st Court of Civil Appeals

### Voudouris v. Walter E. Heller and Company

Failure to file a limited partnership agreement with the secretary of state did not result in the formation of a general partnership. Although the agreement never became effective according to its terms because it was never filed, it does illuminate the intent of the parties. (The defendant's testimony—that he intended to enter a limited partnership, that he took no part in the management of the enterprise, and that he gave up his interest therein soon after his discovery that the partnership agreement had never been filed with the secretary of state—prevents an imposition of liability on the defendant for the debts of the enterprise under Section 12, Limited Partnership Act.) (15 TLWD 3, at 4)

Filed: December 22, 1977, Houston  
Doc. No. 2C138

## 4th Court of Civil Appeals

### Ed Rachel Foundation v. Texas Oil and Gas Corporation

Webb County (the county of the suit) is expressly named in a written oil, gas, and mineral lease contract as the place where the contract is to be performed. The plaintiff's suit is based on an implied obligation of the defendant to drill such wells on the leased premises as a reasonable, prudent operator would drill. The trial court sustained the defendant's plea of privilege.

**Held:** Reversed and remanded. An implied obligation will support venue under Article 1995(5), Revised Civil Statutes, if the place it is to be performed (as here) is expressed in writing. (15 TLWD 3, at 5)

Filed: January 4, 1978, San Antonio  
Doc. No. 2C136

## 10th Court of Civil Appeals

### First State Bank v. Lewis

Section 7.02, Savings and Loan Act (Article 852a, Revised Civil Statutes), requires only that an association on closing its books (1) transfer at least (i.e., a required minimum) five percent of its net income to loss reserves if, at the time of closing, the association's loss reserves do not equal an aggregate amount of five percent of its saving liability, or (2) transfer a lesser amount than five percent of its net income (i.e., "so much of five percent of net income," rather than "so much of net income") if the lesser amount would increase the association's loss reserves to five percent of its saving liability. The statute does not prohibit an association from transferring a larger amount than five percent of its net income to loss reserves, but it set what is denominated in subsection 7.02—.03 as a "required minimum transfer" of five percent of net income. (15 TLWD 3, at 5)

Filed: December 15, 1977, Waco  
Doc. No. 2C137



# OPEN MEETINGS

The Open Meetings Act (Article 6252-17, Texas Civil Statutes) requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. A political subdivision covering all or part of four or more counties, or an institution of higher education, must have notice posted for at least 72 hours before the scheduled meeting time. Notice of an emergency meeting or an emergency addition or amendment to an agenda must be posted for at least two hours before the meeting is convened. Although some notices may be received and filed too late for publication before the meetings are held, all filed notices will be published in the *Register*. Each notice published includes an agenda or a summary of the agenda as furnished for publication by the agency and the date and time of filing. Notices are posted on the bulletin board outside the offices of the secretary of state on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

## Texas Adult Probation Commission

**Thursday and Friday, February 9-10, 1978.** The Texas Adult Probation Commission will meet in the ballroom of the La Posade Hotel, 100 North Main, McAllen, on February 9, 1978, at 6:30 p.m. and on February 10 at 9 a.m. to hear a report on progress of newly leased office space, agency organization, standards for adult probation departments and officers, and payment of state aid.

Additional information may be obtained from Don R. Stiles, 1414 Colorado, Suite 502, Austin, Texas 78711, telephone (512) 475-1374.

Filed: January 26, 1977, 10:05 a.m.  
Doc. No. 780640

## Texas Air Control Board

**Tuesday, March 7, 1978, 9 a.m.** The Texas Air Control Board will meet at 6611 Boeing Drive, El Paso, to conduct a permit hearing to consider the application by Chevron, U.S.A., Inc., for a construction permit authorizing the modification of the refinery fuel gas system at its El Paso refinery.

Additional information may be obtained from John B. Turney, Legal Division, 8520 Shoal Creek Boulevard, Austin, Texas 78758, telephone (512) 451-5711.

Filed: January 23, 1978, 11:31 a.m.  
Doc. No. 780544

## State Depository Board

**Tuesday, February 14, 1978, 10 a.m.** The State Depository Board will meet in the office of the State Treasurer, L.B.J. Building, 111 East 17th Street, Austin, to consider applica-

tions for designation for state depositories by the following banks: Aledo State Bank, Aledo; First National Bank, Copperas Cove; American Bank of Commerce, El Paso; First National Bank, Fairfield; and the First State Bank, Gustine. The board also will consider any other applications received prior to the meeting date, and will review the interest rates charged on time account deposits.

Additional information may be obtained from Warren G. Harding, State Treasurer, P.O. Box 12608, Austin, Texas 78711, telephone (512) 475-2591.

Filed: January 24, 1978, 9:44 a.m.  
Doc. No. 780560

## Commission on Fire Protection Personnel Standards and Education

**Monday and Tuesday, February 13-14, 1978, 9 a.m.** The Fire Suppression Subcommittee of the Commission on Fire Protection Personnel Standards and Education will meet in the fire department conference room, 410 Bagby Street, Houston. A summarized agenda includes a review study of Marine Firemen Standards as currently proposed and consideration of additional curricula; a meeting with representatives of organizations to be affected by proposed standards; consideration of input from these organizations and from representatives of the U.S. Coast Guard; and a tour of harbor facilities.

Additional information may be obtained from Garland W. Fulbright, 8330 Burnet Road, Suite 122, Austin, Texas 78758, telephone (512) 459-8701.

Filed: January 26, 1978, 10:03 a.m.  
Doc. No. 780635

## Texas Health Facilities Commission

**Thursday, February 2, 1978, 10 a.m.** The Texas Health Facilities Commission makes an addition to the agenda of a meeting in Suite 305, 1600 West 38th, Austin, to include the following summarized items: six applications for certificate of need, one motion for withdrawal of certificate of need application, and three applications for exemption certificate.

Additional information may be obtained from William D. Darling, P.O. Box 15023, Austin, Texas 78761, telephone (512) 475-6940.

Filed: January 25, 1978, 11:42 a.m.  
Doc. No. 780610

**Thursday, February 9, 1978, 10 a.m.** The Texas Health Facilities Commission will meet in Suite 305, 1600 West 38th, Austin, to consider the following summarized agenda: eight applications for certificate of need and eight applications for exemption certificate.

Additional information may be obtained from William D. Darling, P.O. Box 15023, Austin, Texas 78761, telephone (512) 475-6940.

Filed: January 25, 1978, 11:42 a.m.  
Doc. No. 780611

## Texas Department of Health

**Saturday, February 11, 1978, 9:30 a.m.** The Technical Advisory Committee for Crippled Children's Services of the Texas Department of Health will meet in Room G-107, 1100 West 49th Street, Austin, to receive reports from subcommittees studying approval procedure for participating physicians and hospitals and conditions which the Crippled Children's Service Program should cover. The committee will also make budget recommendations for the 1980-81 biennium.

Additional information may be obtained from James P. Rabin, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7241.

Filed: January 20, 1978, 10:49 a.m.  
Doc. No. 780499

**Thursday, February 2, 1978, 10 a.m.** The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to consider the implementation of House Bill 1048, 65th Legislature, Accident Prevention Services.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: January 25, 1978, 9:27 a.m.  
Doc. No. 780598

**Thursday, February 2, 1978, 2 p.m.** The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to consider worker's compensation coverage on owner-controlled projects and to discuss worker's compensation classification for wool and mohair warehousemen.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: January 25, 1978, 9:27 a.m.  
Doc. No. 780599

**Tuesday, February 14, 1978, 10 a.m.** The State Board of Insurance will meet in Room 408, 1110 San Jacinto, Austin, to consider proposed variable life insurance regulations.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: January 24, 1978, 10:03 a.m.  
Doc. No. 780562

## Texas Department of Labor and Standards

**Tuesday, March 7, 1978, 10 a.m.** The Auctioneer Division of the Texas Department of Labor and Standards will meet in Room 316, Sam Houston Building, Austin, to determine whether the application of Alton Robert Fairchild, Jr., for a license to conduct auctions will be granted or denied.

Additional information may be obtained from Blake Travis, P.O. Box 12157, Austin, Texas 78711, telephone (512) 475-4229.

Filed: January 25, 1978, 4:09 p.m.  
Doc. No. 780618

**Wednesday, March 8, 1978, 10 a.m.** The Auctioneer Division of the Texas Department of Labor and Standards will meet in Room 316, Sam Houston Building, Austin, for an administrative hearing on the possible denial of an application to auctioneer for Lanham H. Nelson and D. L. Love, pursuant to Article 8700, Vernon's Texas Civil Statutes.



## State Board of Insurance

**Wednesday, February 1, 1978, 10 a.m.** The State Board of Insurance makes an emergency addition to the agenda of a meeting in Room 408, 1110 San Jacinto, Austin, to include consideration of Trust Department Errors and Omissions Program by the National Union Fire Insurance Company.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto, Austin, Texas 78786, telephone (512) 475-2950.

Filed: January 25, 1978, 9:27 a.m.  
Doc. No. 780600



Additional information may be obtained from Blake Travis, P.O. Box 12157, Austin, Texas 78711, telephone (512) 475-4229.

Filed: January 25, 1978, 4:10 p.m.  
Doc. No. 780319

## Lamar University

**Monday, February 6, 1978, 1 p.m.** The Personnel Committee of the Board of Regents of Lamar University will meet in the board room, Plummer Administration Building, Lamar University, main campus, Beaumont, to review recommendations for faculty promotions.

Additional information may be obtained from Andrew J. Johnson, Box 10014, LUS, Beaumont, Texas 77710, telephone (713) 838-7533.

Filed: January 26, 1978, 10:55 a.m.  
Doc. No. 780639

## Board of Examiners of Licensed State Land Surveyors

**Friday, February 3, 1978, 10:30 a.m.** The Board of Examiners of Licensed State Land Surveyors will meet in Room 831, Stephen F. Austin Building, Austin, to discuss examination questions, to study materials to be furnished applicants and to consider an education program to be made available to applicants.

Additional information may be obtained from Herman Forber, Room 812, Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-3145.

Filed: January 19, 1978, 4:02 p.m.  
Doc. No. 780490

## Board of Landscape Architects

**Monday, January 30, 1978, 9 a.m.** The Board of Landscape Architects held an emergency meeting at 5555 North Lamar, Austin, to elect a chairman, to interview for the executive secretary of the board, and to consider a financial report.

Additional information may be obtained from Kathryn Mitchell, 5555 North Lamar, Austin, Texas 78759, telephone (512) 458-4126.

Filed: January 26, 1978, 10:16 a.m.  
Doc. No. 780636

## Texas State Board of Medical Examiners

**Friday through Sunday, February 24-26, 1978, 8 a.m.** The Texas State Board of Medical Examiners will meet at 211 East 7th, Austin. The summarized agenda includes consideration of P.A. rules; duties of district review committees; hearings on possible Medical Practice Act violations; licensure applications; committee reports; licensing and rule matters; other board business; and a meeting with medical school deans.

Additional information may be obtained from J. C. Randolph, 211 East 7th Street, Austin, Texas 78701, telephone (512) 474-6335.

Filed: January 25, 1978, 9:50 a.m.  
Doc. No. 780603



## Texas Department of Mental Health and Mental Retardation

**Saturday, February 5, 1978, 9 a.m.** The Committee to Examine Appointees Requiring Board Approval of the Texas Board of Mental Health and Mental Retardation will meet in Room 437, Airport Marina Hotel, Dallas/Fort Worth Airport, Dallas, to review procedures for evaluation and selection of employees requiring board approval and to review credentials of applicants for the position of commissioner.

Additional information may be obtained from Kenneth D. Gaver, M.D., P.O. Box 12668, Austin, Texas 78711, telephone (512) 454-3761.

Filed: January 25, 1978, 11:17 a.m.  
Doc. No. 780609



## State Board of Morticians

**Wednesday, February 8, 1978, 9 a.m.** The State Board of Morticians will meet at 1513 South Interstate 35, Austin, to consider the following summarized agenda: appearances before the board pertaining to advertisements of an unlicensed funeral establishment; to the holding of services prior to the licensing of a funeral establishment; and to complaints regarding the handling of a body. The board will also discuss all complaints received since the last meeting.

Additional information may be obtained from James W. McCammon, 1513 South Interstate 35, Austin, Texas 78741, telephone (512) 442-6721.

Filed: January 26, 1978, 11:47 a.m.

Doc. No. 780645

## Texas National Guard Armory Board

**Friday, January 27, 1978, 1:30 p.m.** The Texas National Guard Armory Board has made an emergency addition to its agenda for a meeting held in Building 64, Camp Mabry, Austin, to include consideration of Brownwood sale of caliche.

Additional information may be obtained from Harry B. Kelton, Director, Austin, Texas 78763, telephone (512) 475-5481.

Filed: January 26, 1978, 1:42 p.m.

Doc. No. 780647

## Pan American University

**Tuesday, February 7, 1978, 9:30 a.m.** The Grounds Committee of the Board of Regents of Pan American University will meet in the conference room of the administration building, Edinburg, to consider reports and recommendations concerning awarding of a contract for the new bookstore and recommendations concerning the employment of an architect to produce a detailed master plan.

Additional information may be obtained from Dr. Ralph F. Schilling, Pan American University, Edinburg, Texas 78539, telephone (512) 381-2101.

Filed: January 26, 1977, 11:21 a.m.

Doc. No. 780644

**Tuesday, February 7, 1978, 10 a.m.** The Academic and Developmental Affairs Committee of the Board of Regents of Pan American University will meet in executive session in the conference room of the administration building, Edinburg, to consider employment of administrative staff and faculty for the 1978-79 academic year.

Additional information may be obtained from Dr. Ralph F. Schilling, Pan American University, Edinburg, Texas 78539, telephone (512) 381-2101.

Filed: January 26, 1977, 11:21 a.m.

Doc. No. 780645

**Tuesday, February 7, 1978, 11 a.m.** The Board of Regents of Pan American University will meet in the conference room of the administration building, Edinburg, to consider reports of the Buildings and Grounds Committee and of the Academic and Developmental Affairs Committee; to consider appointments to the Business Advisory Council; and to consider the acceptance of gifts.

Additional information may be obtained from Dr. Ralph F. Schilling, Pan American University, Edinburg, Texas 78539, telephone (512) 381-2101.

Filed: January 26, 1977, 11:21 a.m.

Doc. No. 780646

## Board of Pardons and Paroles

**Monday-Friday, February 6-10, 1978, 9 a.m.** The Board of Pardons and Paroles will meet in Room 711 of the Stephen F. Austin Building, Austin. The board, as stated in a summarized agenda, will review cases of inmates for parole consideration; act on emergency reprieve requests and other acts of executive clemency; review reports regarding persons on parole; review procedures affecting the day-to-day operation of support staff; review and initiate needed rule changes relating to general operation, executive clemency, parole, and all hearings; and take action upon gubernatorial directives.

Additional information may be obtained from Ken Casner, 711 Stephen F. Austin Building, Austin, Texas 78701, telephone (512) 475-3363.

Filed: January 24, 1978, 10:05 a.m.

Doc. No. 780563

## Texas Parks and Wildlife Department

**Tuesday, January 24, 1978, 2 p.m.** The Parks and Wildlife Commission held an emergency meeting in Building B, 4200 Smith School Road, Austin, to consider feral hog control in the Engeling Wildlife Management Area.

Additional information may be obtained from Maurine Ray, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4954.

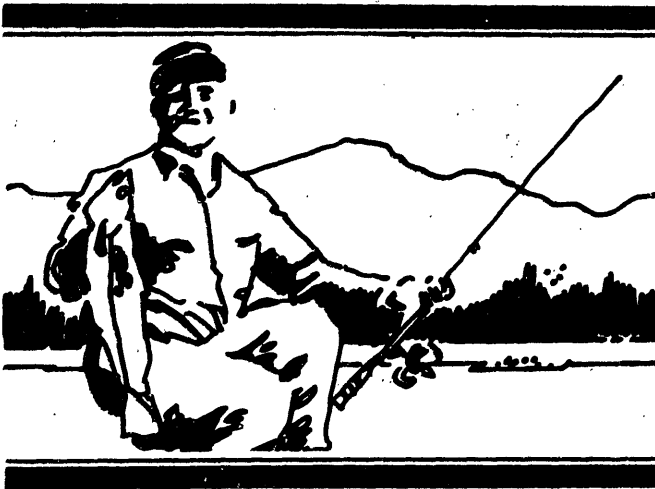
Filed: January 24, 1978, 10:53 p.m.

Doc. No. 780566

**Tuesday, February 14, 1978, 2 p.m.** The Parks and Wildlife Commission will meet in Room A-200, Building B, 4200 Smith School Road, Austin, to consider an application of Bilmac Corporation for a permit to remove approximately 3,870 cubic yards (total) of marl from Lavaca Bay, approximately one mile north from Port Lavaca, Calhoun County, and the application of J. C. Martin for a permit to remove approximately 1,725 cubic yards (total) marl from the Laguna Madra, approximately three and one half miles northeast from Port Isabel, Cameron County.

Additional information may be obtained from Chester Harris, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4831.

Filed: January 26, 1978, 10:54 p.m.  
Doc. No. 780641



## State Board of Registration for Public Surveyors

**Monday-Wednesday, February 20-22, 1978, 8 a.m.** The State Board of Registration for Public Surveyors will meet in the Castilian Room of the Chariot Inn, 7300 North Interstate 35, Austin, on February 20 and 21, and at Suite H-109, 5555 North Lamar, Austin, on February 22, 1978. The agenda, as summarized, includes examinations, interview of applicants, new applications, reconsideration of applicants who were not approved previously to take the examination, and complaints.

Additional information may be obtained from the State Board of Registration for Public Surveyors, Suite H-109, 5555 North Lamar, Austin, Texas 78751, telephone (512) 452-9427.

Filed: January 24, 1978, 9:50 a.m.  
Doc. No. 780561

## Public Utility Commission of Texas

**Friday, February 3, 1978, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet in Suite 400N, 7800 Shoal Creek Boulevard, Austin, in a prehearing conference to consider an application of Doyle Tow, Inc., for a certificate of convenience and necessity within Montgomery County (Docket No. 1544).

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: January 25, 1978, 9:51 a.m.  
Doc. No. 780604

**Monday, February 6, 1978, 9 a.m.** The Public Utility Commission of Texas will conduct a hearing in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to consider Docket Number 1528, the application of Gulf States Utilities Company for a rate increase.

Additional information may be obtained from Roy J. Henderson, Commission Secretary and Director of Hearings, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: January 20, 1978, 4:03 p.m.  
Doc. No. 780531

**Wednesday, February 8, 1978, 10 a.m.** The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to consider an application of Mountain Spring Water Supply Corporat to increase rates (Docket No. 638).

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: January 25, 1978, 9:51 a.m.  
Doc. No. 780605

**Wednesday, February 15, 1978, 10 a.m.** The Public Utility Commission of Texas will conduct a hearing in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to consider Docket 892, Windor Investment Corporation v. Elm Creek Water Supply Corporation (service complaint), a summarized agenda.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: January 23, 1978, 4:09 p.m.  
Doc. No. 780557

**Tuesday, February 21, 1978, 9 a.m.** The Public Utility Commission of Texas will conduct a hearing in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to consider Docket Number 1481, the application of Gum Creek Water Supply Company for a rate increase for its customers in Cherokee County.

Additional information may be obtained from Roy J. Henderson, Commission Secretary and Director of Hearings, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: January 20, 1978, 4:03 p.m.

Doc. No. 780532

**Wednesday, March 8, 1978, 9:30 a.m.** The Public Utility Commission of Texas will conduct a pre-hearing conference in Suite 400N, 7800 Shoal Creek Boulevard, Austin, regarding a complaint of Sharyland Water Supply Corporation regarding the extension of water utility service by the City of Mission into certain areas of Hidalgo County (Docket No. 1069), as summarized.

Additional information may be obtained from Roy J. Henderson, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: January 23, 1978, 4:08 p.m.

Doc. No. 780558

**Wednesday, April 5, 1978, 9 a.m.** The Public Utility Commission of Texas will conduct a hearing in Suite 400N, 7800 Shoal Creek Boulevard, Austin, to consider Docket Number 1528, the application of Gulf States Utilities Company for a rate increase.

Additional information may be obtained from Roy J. Henderson, Commission Secretary and Director of Hearings, Suite 400N, 7800 Shoal Creek Boulevard, Austin, Texas 78757, telephone (512) 458-6111.

Filed: January 20, 1978, 4:03 p.m.

Doc. No. 780533

## Railroad Commission of Texas

**Tuesday, January 24, 1978, 2:30 p.m.** The Transportation Division of the Railroad Commission of Texas held an emergency meeting in the Ernest O. Thompson Building, 10th and Colorado Streets, Austin, to consider the rate established for emergency movement of contaminated grain not fit for human consumption from Galveston to Fort Worth.

Additional information may be obtained from Jerry Spence, P.O. Drawer, 12967, Austin, Texas 78711, telephone (512) 475-3208.

Filed: January 23, 1978, 4:34 p.m.

Doc. No. 780559

**Wednesday, January 25, 1978, 9 a.m.** The Gas Utilities Division of the Railroad Commission of Texas held an emergency meeting at the Ernest O. Thompson Building, 10th and Colorado Streets, Austin, to consider Docket 500, Lo-Vaca Gathering Company, Coastal States Gas Corporation, and Coastal States Gas Producing Company—consideration of motions for rehearing, replies to motions for rehearing, motions to extend time for the commission to rule on motions for rehearing, and responses to the motions to extend.

Additional information may be obtained from Joy Wood, P.O. Drawer, 12967, Austin, Texas 78711, telephone (512) 475-2747.

Filed: January 24, 1978, 3:33 p.m.

Doc. No. 780590

**Monday, January 30, 1978, 9 a.m.** The Gas Utilities Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the Ernest O. Thompson Building, 10th and Colorado Streets, Austin, to include consideration of filing comments on behalf of the Railroad Commission of Texas in F.E.R.C. Docket RM 78-4, proposal of the Federal Energy Regulatory Commission relating to the incorporation of the compensation provisions in curtailment plans.

Additional information may be obtained from Joy Wood, P.O. Drawer, 12967, Austin, Texas 78711, telephone (512) 475-2747.

Filed: January 24, 1978, 3:34 p.m.

Doc. No. 780591

**Monday, January 30, 1978, 9 a.m.** The Gas Utilities Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the Ernest O. Thompson Building, 10th and Colorado Streets, Austin, to include consideration of an Docket 1129, Examiner James O. Houchins, City Public Service Board of San Antonio, application for change in extension policy, customer charges, rules and regulations, and consideration of motion for rehearing.

Additional information may be obtained from Joy Wood, P.O. Drawer, 12967, Austin, Texas 78711, telephone (512) 475-2747.

Filed: January 24, 1978, 3:34 p.m.

Doc. No. 780592

## Texas Surplus Property Agency

**Thursday, February 2, 1978, 10 a.m.** The Governing Board of the Texas Surplus Property Agency will meet at 118 East Riverside Drive, Austin, to consider the quarterly financial status report; service and handling fee rate increase; lease renewals for Fort Worth and Lubbock; and routine business.

Additional information may be obtained from Ray Underwood, P.O. Box 8120, San Antonio, Texas 78208, telephone (512) 661-2381.

Filed: January 17, 1978, 10:32 a.m.  
Doc. No. 780407



## Texas Water Commission

**Thursday, February 16, 1978, 10 a.m.** The Texas Water Commission will conduct a hearing in the Stephen F. Austin Building, Austin. A summarized agenda includes consideration of Sharyland Water Supply Corporation's application for an amendment to Certificate of Adjudication 23-18, to change the classification, purpose of use, place of use, and point of diversion of 650 acres of Class B water rights in Cameron County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: January 17, 1978, 3:47 p.m.  
Doc. No. 780423

**Thursday, February 16, 1978, 10 a.m.** The Texas Water Commission will conduct a hearing in the Stephen F. Austin Building, Austin. A summarized agenda includes consideration of Sharyland Water Supply Corporation's application for an amendment to Certificate of Adjudication 23-399, to change the classification, purpose of use, place of use, and point of diversion of 20 acres of Class B water rights in Hidalgo County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: January 17, 1978, 3:47 p.m.  
Doc. No. 780424

**Wednesday, March 22, 1978, 10 a.m.** The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to further consider the application by the City of Houston to amend Permit Number 1970. As stated by the commission in a summarized agenda, the applicant seeks to amend Permit Number 1970 to add a diversion point, change use of water authorized under the permit from industrial to municipal, and to use a proposed pipeline for a transbasin diversion of water.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: January 20, 1978, 1:38 p.m.  
Doc. No. 780522

## Regional Agencies

### Meetings Filed January 23, 1978

**The Austin-Travis County MH/MR Center, Personnel Committee** of the Board of Trustees, met at 6502 Sumac, Austin, on January 26, 1978, at 6:30 p.m. Further information may be obtained from Larry J. Miller, 1430 Collier, Austin, Texas 78704, telephone (512) 447-4141.

**The Austin-Travis County MH/MR Center, Board of Trustees**, met at 1430 Collier, Austin, on January 26, 1978, at 7:30 p.m. Further information may be obtained from Larry J. Miller, 1430 Collier, Austin, Texas 78704, telephone (512) 447-4141.

**The Golden Crescent Subarea Advisory Council, Plan Development Committee**, met in Room 126, 2200 East Red River, Victoria, on January 25, 1978, at 7:30 p.m. Further information may be obtained from Emily M. Petersen, Box 2378, Station 1, Kingsville, Texas 78363, telephone (512) 595-5545.

**The South Texas Development Council, Government Application Review Committee**, met in the conference room at 600 South Sandman, Laredo, on January 26, 1978, at 10 a.m. Further information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78041, telephone (512) 722-3995.

Doc. No. 780556

### Meetings Filed January 24, 1978

**The Angeline and Neches River Authority, Board of Directors**, will meet at the Southland Staff House, Kurth Lake, Lufkin, on January 31, 1978, at 11 a.m. Further information may be obtained from William A. More, P.O. Box 387, Lufkin, Texas, telephone (713) 632-7795.

**The Ark-Tex Council of Governments, Youth Advisory Committee**, will meet at the Guaranty Bond State Bank, Mount Pleasant, on January 31, 1978, at 11 a.m. The Regional Manpower Advisory Council will meet at 11:30 a.m. Further information may be obtained from Laura Jacobus, P.O. Box 5307, Texarkana, Texas 75501, telephone (501) 774-3481.

*The Brazos Valley MH/MR Center, Executive Committee, Board of Trustees, met at 202 East 27th Street Bryan, on January 24, 1978, at 2 p.m. The board of trustees met at 4 p.m. Further information may be obtained from Linda S. Davis, 202 East 27th Street, Bryan, Texas 77801, telephone (713) 779-2000.*

*The Central Texas Council of Governments, Killeen-Temple Area-wide Planning Advisory Committee, will meet at 302 East Central, Belton, on February 15, 1978, at 3 p.m. Further information may be obtained from Rick Tucker, P.O. Box 729, Belton, Texas 76513, telephone (817) 939-1801.*

*The South Texas Health Systems Agency, Coastal Bend Subarea Health Advisory Council, will meet at 4040 Greenwood, Corpus Christi, on February 1, 1978, at 7:30 p.m. Further information may be obtained from Emily M. Petersen, Box 2378, Station 1, Kingsville, Texas 78363, telephone (512) 595-5545.*

*The Tri-Region Health Systems Agency, Nortex Subarea Plan Development Committee met at 1505 8th Street, Wichita Falls, on January 26, 1978, at 6 p.m. Further information may be obtained from Michal Hubbard, 2642 Post Oak Road, Suite B, Abilene, Texas 79605, telephone (915) 698-9481.*

*The Tri-Region Health Systems Agency, Project Review Committee, will meet in Room 211, Moody Center, Abilene, on January 31, 1978, at 5 p.m. Further information may be obtained from Ken Cooley, 2642 Post Oak Road, Suite B, Abilene, Texas 79605, telephone (915) 698-9481.*

Doc. No. 780564

## Meetings Filed January 25, 1978

*The Sabine Valley Regional MH/MR Center, Board of Trustees, meet at 1602 West Grand Avenue, Marshall, on January 26, 1978, at 7:30 p.m. Further information may be obtained from Frances H. Willis, P.O. Box 1128, Longview, Texas, telephone (214) 758-8243.*

*The Tri-Region Health Systems Agency, Executive Committee, will meet at the Hendrick Medical Center, 19th and Hickory Streets, Abilene, on February 2, 1978, at 3 p.m. Further information may be obtained from Jim Anderson, 2642 Post Oak Road, Abilene, Texas 79605, telephone (915) 698-9481.*

*The Texas Municipal Power Agency, Board of Directors, met in executive session in Room 239, Airport Marina Hotel, Dallas/Fort Worth Airport, on January 26, 1978, at 4:30 p.m. Further information may be obtained from Paul R. Cunningham, 600 Arlington Downs Tower, Arlington, Texas 76011, telephone (817) 461-4400.*

Doc. No. 780606

## Meetings Filed January 26, 1978

*The Brazos Valley MH/MR Center, Board of Trustees, will meet in the board room, 202 East 27th Street, Bryan, on January 31, 1978, at 4 p.m. Further information may be obtained from Linda S. Davis, 202 East 27th Street, Bryan, Texas 77801, telephone (713) 779-2000.*

*The Central Texas MH/MR Center, Board of Trustees, will meet in the board room, 308 Lakeway Drive, Brownwood, on January 31, 1978, at 4:30 p.m. Further information may be obtained from James H. Dudley, P.O. Box 250, Brownwood, Texas 76801, telephone (915) 646-9574.*

*The Education Service Center Region VIII, Board of Directors, will meet at the Black Angus Ranch Restaurant, 203 West 1st, Mount Pleasant, on February 7, 1978, at 6:30 p.m. Further information may be obtained from Thomas Carney, 100 North Riddle, Mount Pleasant, Texas 75455, telephone (214) 572-6676.*

*The Houston Metropolitan Transit Authority, Board of Directors, will meet in the mayor's conference room, city hall, 900 Brazos, Houston, on February 3, 1978, at 2 p.m. Further information may be obtained from Marilee M. Wood, P.O. Box 1562, Houston, Texas 77001, telephone (713) 225-1151.*

*The South Texas Health Systems Agency, Golden Crescent Subarea Health Council, will meet in Room 126, 2200 Red River, Victoria, on February 8, 1978, 7:30 p.m. Further information may be obtained from Emily M. Petersen, Box 2378, Station 1, Kingsville, Texas 78363, telephone (512) 595-5545.*

*The South Texas Health Systems Agency, Lower Rio Grande Valley Subarea Advisory Council, will meet at the Sheraton Harlingen Inn, Expressway 83 and Stewart Place Road, Harlingen, on February 8, 1978, at 7 p.m. Further information may be obtained from E. M. Maese, Box 2378, Station 1, Kingsville, Texas 78363, telephone (512) 595-5545.*

Doc. No. 780642

## State Bar of Texas

### Recognizing New Legal Issues

The State Bar of Texas' General Practice Section and Baylor University School of Law are sponsoring a one-day institute designed to highlight for Texas practitioners new legal issues they should be aware of in 1978. The institute will be held February 17, 1978, in the Baylor Law School Auditorium, South Fifth Street, Waco.

Robert Norris of Austin and Robert Stahala of Fort Worth are the moderators. Events and speakers include welcoming remarks by Dean Angus S. McSwain, Waco, Baylor School of Law; Civil Trial: Recent Developments in Civil Procedure, Remedies, and Damages; Basic Issue Recognition—Consumer Law Problems and Remedies; Effect of the Tax Reform Act of 1976; Legal Advertising, Avoiding Unintentional Grievances, Legal Malpractice, Current Status of Legal Malpractice Insurance, "Sunset" Legislation, Specialization, Group Prepaid Legal Services, Lawyer Referral Services; Basic Issue Recognition in Securities and Antitrust Problems; Basic Oil and Gas and Natural Resources Law; The Growing Effect of Federal Constitutional Law on Practice Before State Administrative Agencies and Local Governments.

Non-lawyers, such as legal secretaries or interested clients, are welcome to attend this institute on the same basis as lawyers.

Pre-registration is \$30 and door registration is \$35. Registration may be made by sending a check payable to the State Bar of Texas along with a letter stating name, address, and telephone number to the State Bar of Texas, General Practice Section, P.O. Box 12487, Austin, Texas 78711.

Issued in Austin, Texas, on January 13, 1978.

Doc. No. 780528 Judy Bolton  
State Bar of Texas

Filed: January 20, 1978, 2:58 p.m.

For further information, please call (512) 475-6842.

## Texas Department of Community Affairs

### State Young Adult Conservation Corps Program

#### Request for Proposals

The Texas Department of Community Affairs (TDCA) will consider proposals for state and local projects to be funded by contract under the Youth Employment and Demonstration Projects Act of 1977, Public Law 95-93, Comprehensive Employment and Training Act of 1973 (CETA), as amended, Title VIII—Young Adult Conservation Corps. Proposals for funding consideration will be for projects in the 1978 state grant program of the Young Adult Conservation Corps.

**Purpose:** To provide employment and other benefits to youths age 16 through 23 who would not otherwise be currently productively employed through a period of service during which they engage in useful conservation work and assist in completing other projects of a public nature on nonfederal public lands and waters.

**Services to be Provided:** Sponsor entities shall ensure participants are provided employment and related opportunities in fields such as tree nursery operations, planting, pruning, thinning, and other silviculture measures; wildlife habitat improvements and preservation; range management improvements; recreation development, rehabilitation, and maintenance; fish habitat and culture measures; forest insect and disease prevention and control; road and trail maintenance and improvements; general sanitation, cleanup, and maintenance; erosion control and flood damage; drought damage measures; and other natural disaster damage measures.

To the maximum extent practicable, projects shall be labor intensive; be projects for which work plans can be readily developed and initiated promptly; be productive; be likely to have a lasting impact both as to the work performed and the benefit to the participants; provide work experience to participants in skill areas required for the work tasks; and be similar to activities of persons employed in seasonal and part-time employment in agencies such as the National Park Service, U.S. Fish and Wildlife Service, Bureau of Reclamation, Bureau of Land Management, Bureau of Indian Affairs, Forest Service, Bureau of Outdoor Recreation, and Soil Conservation Service.

#### Types and Sizes of Projects.

**Residential project:** A work encampment established and maintained to provide seven-days-per-week, 24-hours-per-day residential support services for participants.

**Nonresidential project:** A work project in which participants commute daily from residence to work site or sponsor entity staging area.

For 1978, the projects shall be operational from April 1, 1978, to September 30, 1979; for 1979, October 1, 1978, to September 30, 1979.

For planning purposes, the range of individual project funding for 1978 will be from \$100,000 to \$200,000. Matching funds are not required for the state YACC Program. The number of participants per 1978 project should range from 20 to 50.

**Sponsor Eligibility:** Applicant entities may be any state agency or institution, or any unit of general local government, or any public agency or organization, or any private nonprofit agency or organization which has been in existence for at least two years. Note: Preference will be given to those entities in or near areas of substantial employment (six and one-half percent or over unemployment rate) as determined by the U.S. Department of Labor.

At this time, the Youth Services Division of the Texas Department of Community Affairs is soliciting for proposals in order that a state grant application may be submitted to the federal government. Interested eligible entities may immediately request a Request for Proposals package or more information from Glenn E. McAlister, director of Youth Services Division, Texas Department of Community Affairs, P.O.



Box 13166, Austin, Texas 78711, telephone 1-800-252-9642 (toll free) or (512) 475-6335.

Issued in Austin, Texas, on January 19, 1978.

Doc. No. 780529      Tom A. Laraméy, Jr.  
General Counsel  
Texas Department of Community  
Affairs

Filed: January 20, 1978, 3:41 p.m.

For further information, please call (512) 475-6335.

## Comptroller of Public Accounts

### Summary of Administrative Decision 8253

**Summary of Decision:** A reserve account covering the petitioner's estimated costs of its Christmas gifts to its employees was a proper deduction from surplus for franchise tax purposes to the extent of the actual expenses charged off on the petitioner's year-end statement.

For copies of recent opinions selected and summarized by the Legal Services Division, contact the Legal Services Division, P.O. Box 13528, Austin, Texas 78711. Copies will be furnished without charge and edited to comply with our confidentiality statutes.

Issued in Austin, Texas, on January 25, 1978.

Doc. No. 780608      Harriet D. Burke  
Hearings Section  
Comptroller of Public Accounts

Filed: January 25, 1978, 11:03 a.m.

For further information, please call (512) 475-2148.

## Texas Department of Health Correction of Errors

The proposed rules of the Texas Department of Health concerning nursing and convalescent homes which were published in the January 6, 1978, issue of the *Texas Register* (3 TexReg 36) contained several errors. Corrections are as follows:

(1) Item (5) in the preamble to Subchapter 301.54.02 (page 36) should read, "Rule .009 will be further amended to authorize the facility to contract with a registered pharmacist. . . ."

(2) Rule .006(d)(9) on page 37 should read, "(9) Medication aides as described in .002(o) and (p) will function under the direct responsibility and/or supervision of the licensed nurse on duty and ultimately under the responsibility of the director of nurses and administrator of the facility."

(3) The second sentence of Rule .010(a)(2) on page 37 should read, "Bulk dangerous and/or controlled drugs shall not be maintained in the nursing home, except as

outlined in .010(f), Emergency drug and equipment tray."

(4) The last sentence of Rule .010(a)(3) on page 38 should be enclosed by brackets to indicate the department's intention to delete that sentence.

(5) Rule .010(c)(3) on page 38 should read, "The person preparing the [Each] dose shall administer [administered] the dose and [is] properly record the medicine administered [recorded] in the appropriate clinical record, including dosage, strength, and method of administration."

(6) The second and third sentences of Rule .010(d)(2) on page 39 should read, "Schedule II drug balances shall be verified by inventory every eight hours (each shift change). Schedule III and IV drug balances shall be verified at least once a week."

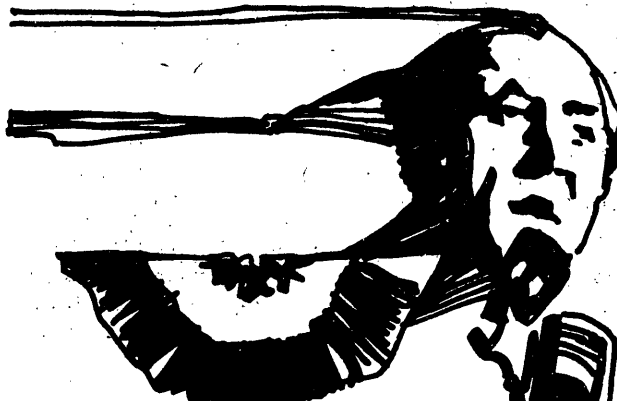
(7) Item (6) in the preamble to Subchapter 301.54.03 (page 40) should read, "Rule .009 will be further amended to authorize the facility to contract with a registered pharmacist. . . ."

(8) The first and second sentences of Rule .009(a)(5) on page 42 should read, "The label of each resident's individual drug containers shall be labeled in accordance with all federal and state statutes. There shall be affixed to the immediate container in which said drug is delivered a label which clearly indicates the resident's full name, the prescribing physician's name, prescription number, name and strength of the drug, amount dispensed, date of issue, . . ."

(9) The first sentence of Rule .009(c)(1) on page 42 should read, "Drugs and biologicals are administered only by physicians, licensed nursing personnel, or by other personnel who have completed a state-approved training program in medication administration under the conditions outlined in Rule .002(m) and (n)."

(10) The text of Rule .009(f)(1) on page 43 should be deleted and the subsequent subsections renumbered accordingly.

(11) The first sentence of the second paragraph in the preamble to Subchapter 301.54.08 (page 43) should read, "The purpose of the program will be to teach and train non-licensed nursing personnel (medication aides) to perform the following medication functions:"



## Texas Department of Water Resources

### Notice of Availability of Publication

The Texas Department of Water Resources has published the final report of the Texas Water Development Board for the year September 1, 1976, through August 31, 1977. This report describes the operations, programs, and accomplishments of the Water Development Board for fiscal year 1977. Copies are available upon request from the Texas Department of Water Resources, Publications Distribution, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4211.

Doc. No. 780521

### Water Quality Management Plan for the Nueces Basin

#### Notice of Public Hearings to Receive Testimony

A hearing commission of the Texas Department of Water Resources will conduct two public hearings in order to receive testimony concerning *Volume I, Basic Data Report*, of the Water Quality Management Plan for the Nueces Basin. Dates, times, and locations of the hearings are as follows:

1:30 p.m. February 22, 1978  
Neighborhood Service Center  
300 East Main  
Uvalde, Texas

and

1:30 p.m. February 23, 1978  
County Commissioner's Courtroom  
Nueces County Courthouse  
901 Leopard  
Corpus Christi, Texas

This document is the first of two volumes which, upon completion of Volume II, will form the Water Quality Management Plan for the Nueces Basin. *Volume I, Basic Data Report*, includes information on existing wastewater treatment facilities; existing water quality; existing land-use patterns; existing population; and projections of economic growth, population, and probable land-use patterns. *Volume II, Plan Summary Report*, will present the recommended plans for water quality management and the legal, financial, and institutional requirements of each plan. Also included in Volume II will be descriptions of feasible alternatives, an environmental assessment, and a summary of the public participation activities conducted during the development of the plan. The Water Quality Management Plan for the Nueces Basin is being developed to satisfy the requirements of Section 208 of the Federal Water Pollution Control Act Amendments of 1972, and pursuant to Title 40 Code of Federal Regulations, Parts 130 and 131 and the State of Texas Continuing Planning Process.

The public hearing shall be conducted in compliance with Section 26.037 (formerly Section 21.089), Texas Water Code.

The study area for this plan includes most of the Nueces River Basin. This plan will not address the planning required in the Corpus Christi Designated Areawide Planning Area; detailed planning within that area will be provided through the development of the Corpus Christi Areawide Waste Treatment Management Plan and will not be considered at this hearing.

Copies of the *Basic Data Report* will be made available for public inspection at the following locations: Texas Department of Water Resources Offices, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas; Texas Department of Water Resources District 8 Office, Dellcrest Plaza No. 2, 4713 Rigsby Avenue, San Antonio, Texas 78222; Texas Department of Water Resources District 11 Office, 420 South Missouri Avenue, Weslaco, Texas 78596; Texas Department of Water Resources District 12 Office, Klee Square Building, Suite 515, 505 South Water Street, Corpus Christi, Texas 78401; the Coastal Bend Council of Governments, Parkdale Square Office Tower, 4600 Parkdale Drive, Corpus Christi, Texas 78411; and the Nueces River Authority, 300 East Main Street, Uvalde, Texas 78801. Copies of *Volume II, Plan Summary Report*, will be made available at these same locations when completed in June, 1978. However, the hearing cited in this notice will consider only *Volume I, Basic Data Report*, of the Water Quality Management Plan for the Nueces Basin.

Requests for copies of the *Basic Data Report* and questions about it should be addressed to Jack Kramer, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, or call (512) 475-3454. When requesting a copy or sending a query by mail, please include your complete return address and telephone number.

The public is encouraged to attend the hearing and to present evidence or opinions as to the accuracy of the existing and projected data compiled in the *Basic Data Report*. Written testimony which is submitted prior to or during the public hearing will be included in the record. The hearing commission would appreciate receiving a copy of all testimony at least five days before the hearing. The testimony and questions concerning the public hearing should be addressed to Gordon W. Houser, Texas Department of Water Resources, P.O. Box 13087, Austin, Texas 78711, or call (512) 475-5516.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 30 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

This public hearing may be continued in order to fully develop the evidence.

Issued in Austin, Texas, on January 18, 1978.

Doc. No. 780541-  
780542      Gordon W. Houser  
General Counsel's Office  
Texas Department of Water  
Resources

Filed: January 23, 1978, 10:48 a.m.

For further information, please call (512) 475-3454.

## Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the February, March, and April issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Friday of the preceding week and Monday of the week of publication. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays. Please note that the issue published on April 28 will be an index; no other material will be published in this issue. The *Texas Register* will not be published on March 7.

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