

APR 26 89

Texas Register

Volume 14, Number 31, April 25, 1989

Pages 1955-2047

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Texas Register

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

Governor—appointments, executive orders, and proclamations

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

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

Proposed Sections—sections proposed for adoption

Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings—notices of open meetings

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

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

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

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

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



Texas Register Publications

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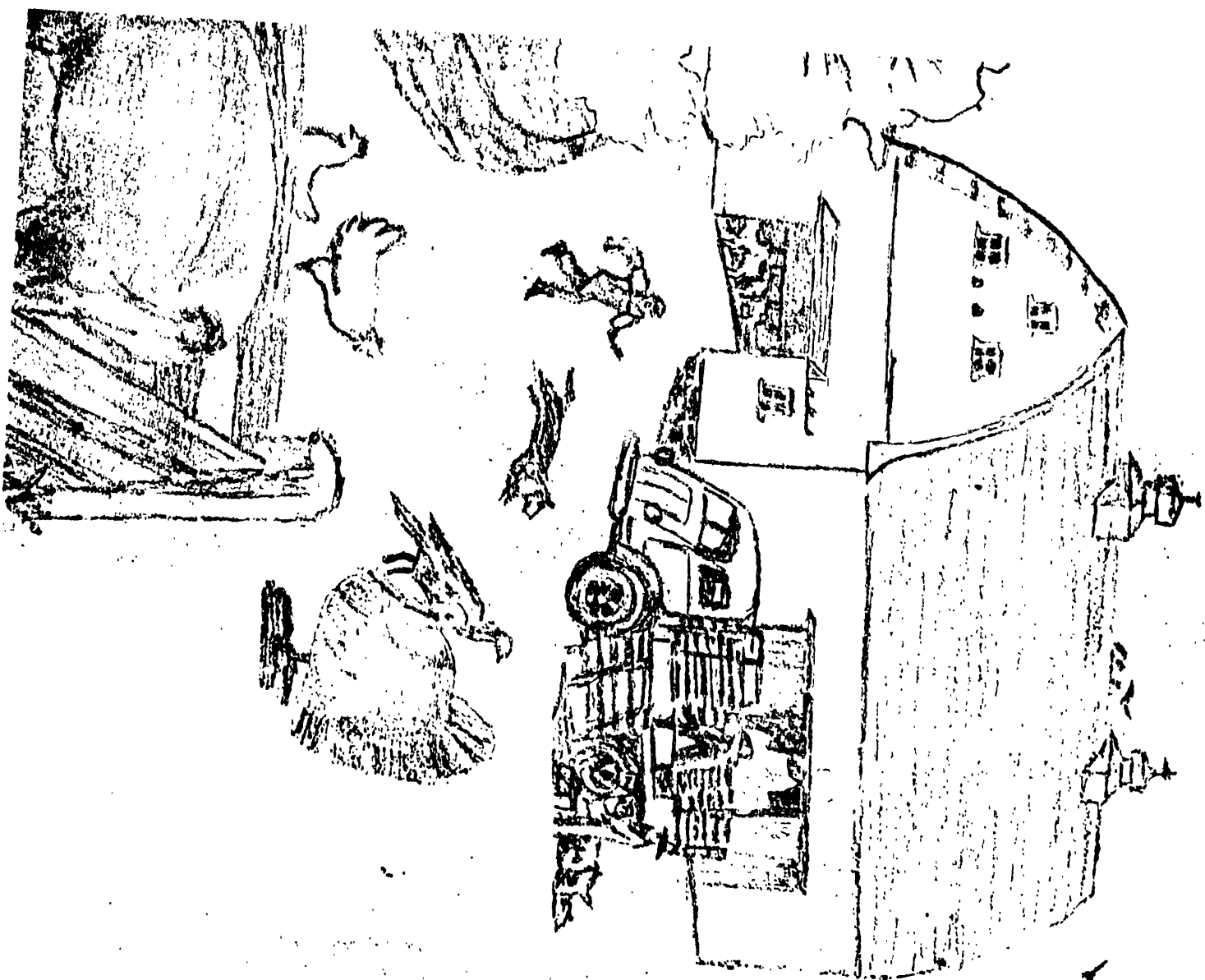
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A Guide to Texas State Agencies

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PA

THE TEXAS FARM

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TAC Titles Affected

TAC Titles Affected—April

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- 4 TAC §18.33—1967

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- 7 TAC §81.20—1683

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- 16 TAC §5.294—1679
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- 16 TAC §§9.31, 9.34, 9.46, 9.50, 9.59, 9.61, 9.65—1922
- 16 TAC §9.36, §9.64—1917
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- 16 TAC §9.177—1927
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16 TAC §9.210—1927

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16 TAC §309.307—1869

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19 TAC §§61.145—1707

19 TAC §§69.122, 69.127, 69.129—1897

19 TAC §75.61—1901

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22 TAC §281.23—1934

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22 TAC §511.55—1743

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25 TAC §§404.101-404.107—1967, 2008

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28 TAC §3.408—1870

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28 TAC §7.1007—1705, 1861

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28 TAC §11.1205—1749

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34 TAC §3.329—1736

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37 TAC §211.67—1741, 1737

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40 TAC §8.9—1817

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43 TAC §21.33—1705

43 TAC §21.33, §21.41—1706



The Governor

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

Appointments Made April 4, 1989

To be a member of the Produce Recovery Fund Board for a term to expire January 31, 1995: Steven L. Weltman, 3911 East Wisteria Circle, Sugarland, Texas 77479. Mr. Weltman is being reappointed.

To be a member of the Texas Real Estate Commission for a term to expire January 31, 1995: Marsha Spencer, 5110 San Felipe 193W, Houston, Texas 77056. Ms. Spencer will be replacing David Cook of Houston, whose term expired.

To be a member of the Texas Real Estate Commission for a term to expire January 31, 1995: Henry Santamaria, 801 Somerset, El Paso, Texas 79912. Mr. Santamaria will be replacing Rachel Perelman of Brownsville, whose term expired.

To be a member of the Angellina and Neches River Authority Board of Directors for a term to expire September 5, 1991: Mr. Paul Richard Riehle, Route 5 Box 6845, Lufkin, Texas 75901. Mr. Riehle will be filling the unexpired term of Richard Baldwin of Candan, who resigned.

To be a member of the Texas Housing Agency Board of Directors for a term to expire January 31, 1995: Rogers Pope, 1300 Mockingbird, Longview, Texas 75601. Mr. Pope will be replacing J. Stanley Stephens of Bryan, whose term expired.

To be a member of the Brazos River Authority Board of Directors for a term to expire February 1, 1995: Robert Ellington Hebert, 65 Queen Mary Court, Sugarland, Texas 77479. Mr. Hebert will be replacing Walter Clifford Wiese, Jr. of Calvert, whose term expired.

Appointments Made April 5, 1989

To be a member of the State Purchasing and General Services Commission, for a term to expire January 31, 1995: Robert E. Davis, 1010 Gloucester, Irving, Texas 75062. Mr. Davis is being reappointed.

Appointments Made April 10, 1989

To be a Branch Pilot for Galveston Bar and the Houston Ship Channel, for a term to expire January 16, 1993: Captain Ernest D. Reed, Route 5, Box 266-B, Cleveland, Texas 77327. Captain Reed is being reappointed.

To be a Branch Pilot for Galveston Bar and the Houston Ship Channel, for a term to expire January 16, 1993: Captain Lance A. Miller, 1306 El Dorado, Houston, Texas 77062. Captain Miller is being reappointed.

To be a Branch Pilot for Galveston Bar and the Houston Ship Channel, for a term to expire January 16, 1993: Captain Allan R. Barry, 15006 Trowbridge Court, Houston, Texas 77062. Captain Barry is being reappointed.

To be a member of the Upper Colorado River Authority Board of Directors for a term to expire February 1, 1995: George Ray Alderman, 503 South Main, Winters, Texas 79567. Mr. Alderman will be replacing Everett J. Grandstaff of Ballinger, whose term expired.

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1995: Dan O. Dennis, 638 Philomeno, Corpus Christi, Texas 78412. Mr. Dennis will be replacing Bill Edwards of Corpus Christi, whose term expired.

To be a member of the Nueces River Authority Board of Directors for a term to expire February 1, 1995: Mr. Joseph Eggleston Gardner, Jr., 216 Indiana, Corpus Christi, Texas 78404. Mr. Gardner is being reappointed.

To be a member of the Brazos River Authority Board of Directors for a term to expire February 1, 1995: Art King, 214 Helena Bryan, Texas 77801. Mr. King will be replacing Glynn A. Williams of Bryan, whose term expired.

To be a member of the Brazos River Authority Board of Directors for a term to expire February 1, 1995: Ruth Schiermeyer, 3005 25th Street, Lubbock, Texas 79410. Ms. Schiermeyer will be replacing Bruce V. Campbell, Jr., of Knox City, whose term expired.

To be a member of the Upper Neches River Municipal Water Authority Board of Directors for a term to expire February 1, 1995: Ben L. Swinney, 233 Glenwood Drive, Palestine, Texas 75801. Mr. Swinney is being reappointed.

Appointments Made April 11, 1989

To be a member of the Texas National Research Laboratory Commission for a term to expire February 1, 1995: Warren G. Woodward, 3310 Fairmount, Dallas, Texas 75201. Mr. Woodward will be replacing Perry Bass of Fort Worth, whose term expired.

To be a member of the Advisory Board of Athletic Trainers for a term to expire January 31, 1995: Thomas D. Wilson, Jr., 4230 Parkcrest, Houston, Texas 77034. Mr. Wilson will be replacing Samuel Moore Russell of Lewisville, whose term expired.

To be a member of the Texas Board of Licensure for Nursing Home Administrators, for a term to expire January 31, 1995: Herman D. Sabrsula, 12527 Meadow Lake Drive, Houston, Texas 77077. Mr. Sabrsula is being reappointed.

To be a member of the Texas Board on Aging for a term to expire February 1, 1995: Jan Patterson, 9854 Estate Lane, Dallas, Texas 75238. Mrs. Patterson will be replacing Eustolio Gonzales of Raymondville, whose term expired.

To be a member of the Texas Board on Aging for a term to expire February 1, 1995: Margaret W. Carter Luckie, 511 Lazy Lane, Wharton, Texas 77488. Ms. Luckie will be replacing Floyd C. Burnett of Ladonia, whose term expired.

Appointments Made April 12, 1989

To be a member of the Texas Board of Architectural Examiners for a term to expire January 31, 1995: George Ray Rodgers, 301 Hughes Street, Marshall, Texas 75670. Mr. Rodgers will be replacing James E. Buie of Longview, whose term expired.

To be a member of the Texas State Board of Public Accountancy for a term to expire January 31, 1995: Ronnie Rudd, 2121 Pelham, Houston, Texas 77019. Mr. Rudd will be replacing Oscar C. Mascorro of San Antonio, whose term expired.

To be a member of the Texas State Board of Public Accountancy for a term to expire January 31, 1995: Stanley L. Blend, 16427 Axis Trail, San Antonio, Texas 78232. Mr. Blend will be replacing Barbara Shimaitis of Katy, whose term expired.

To be a member of the Texas Funeral Service Commission for a term to expire January 31, 1995: Russell Wayne Allen, 1112 Trinity Drive, Benbrook, Texas 76126. Mr. Allen will be replacing Henry Thoma, Sr., of San Benito, whose term expired.

Issued in Austin, Texas, on April 9, 1989.

TRD-8903532

William P. Clements, Jr.
Governor of Texas





Name: Casey Scarborough
Grade: 7
School: Sweeny Jr. High, Sweeny

Attorney General

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

Opinions

JM-1037 (RQ-1545). Request from Jim Mapel, Criminal District Attorney, Brazoria County, Angleton, concerning whether the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17, authorizes a city to hold an emergency meeting to discuss indemnifying council members in a lawsuit and hiring an outside law firm to represent the council.

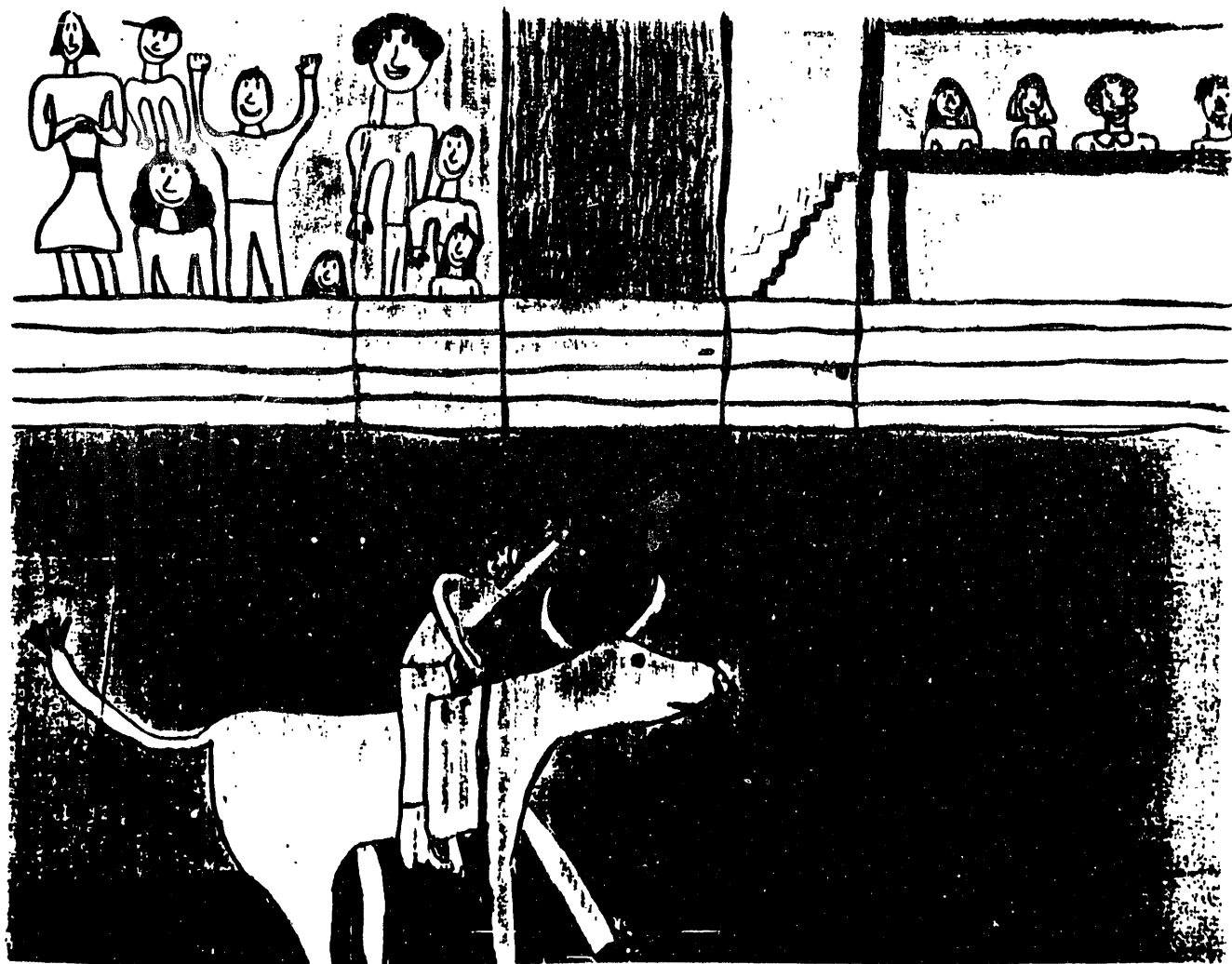
Summary of Opinion. An emergency meeting, a meeting posted with only two hours notice, to discuss the topics indemnify

nify the Alvin City council and hire a law firm to represent the Alvin City council does not comply with the notice requirements of Texas Civil Statutes, Article 6252-17,3A(h) when the notice fails to state the reason for the emergency and when the city had more than 20 days in which to take action on the topics discussed. TRD-8903438

JM-1038 (RQ-1552). Request from Joe Lucak, El Paso County Attorney, El Paso, concerning whether a third party adminis-

trator of an insurance contract is a professional for purposes of exemption from competitive bidding.

Summary of Opinion. Whether the services of a third party administrator are professional services within the meaning of the competitive bidding requirement exception in the Local Government Code, §252.022(a)(4) is a question of fact, and depends on the particular services to be provided under a specific contract. TRD-8903439



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School: Sweeny Elementary, Sweeny

Emergency Sections

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 18. Organic Food Standards and Certification

• 4 TAC §18.33

The Texas Department of Agriculture adopts on an emergency basis an amendment to §18.33, concerning the composition of the Certification Review and Standards Advisory Committee under the Organic Food Standards and Certification Program.

The department is in the process of establishing the Certification Review and Standards Advisory Committee, which will review current rules regarding the Organic Food Standards and Certification Program and propose amendments as needed to maintain the purposes of the program. The department believes that the expansion and change in the composition of the advisory committee will better ensure the integrity of the goals and purposes of the Organic Food Standards and Certification Program. It is necessary to adopt this amendment on an emergency basis to protect the welfare of those members of the public who will be purchasing and consuming certified organically grown foods.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, Title 2, Chapter 12, §12.002, which provides the Texas Department of Agriculture with the authority to encourage the proper development of agriculture, horticulture, and related industries, and the Texas Agriculture Code, Title 2, Chapter 12, §12.016, which authorizes the department to adopt rules as necessary for the administration of §§12.001-12.015 of the Code.

§18.33. Application for Permission To Use the Texas Department of Agriculture "Certified Organic" Logo or the Texas Department of Agriculture "Organic Certification Pending-Transitional" Logo.

(a)-(e) (No change.)

(f) Certification Review and Standards Advisory Committee.

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

(3) The Certification Review and Standards Advisory Committee shall be made up of 10 [six] members, of which four [two] are organic producers; one is a processor of organic food; two are [one is a] technical advisors, agronomists, or horticulturists [technical advisor, agronomist, or horticulturist]; two are [one is a]

representative of consumers; and one is a retailer or distributor of organic food.

(4) (No change.)

Issued in Austin, Texas, on April 19, 1989.

TRD-8003572

Dolores Alvarado Hibbe
Director of Hearings
Texas Department of
Agriculture

Effective date: April 19, 1989

Expiration date: August 17, 1989

For further information, please call: (512) 483-7583

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 404. Protection of Client and Staff

Subchapter D. Client Abuse, Neglect, and Exploitation in Registered Boarding Homes

• 25 TAC §§404.101-404.107

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts on an emergency basis new §§404.101-404.107, concerning client abuse, neglect, and exploitation in registered boarding homes. The new subchapter provides procedures by which mental health and mental retardation authorities under the auspices of TDMHMR will receive complaints and investigate allegations of abuse, neglect, and exploitation of elderly or disabled persons residing in boarding homes to which clients are referred.

The emergency action is necessary to immediately assure the health, welfare, and safety of persons referred to boarding home by mental health and mental retardation authorities.

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

§404.101. Purpose. The purpose of this subchapter is to provide procedures to investigate the abuse, neglect, or exploitation of an elderly or disabled person residing in a registered boarding home.

§404.102. Application. The provisions of this subchapter apply to all mental health and mental retardation authorities that register boarding homes pursuant to the Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-206.

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

Abuse—The willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical harm or pain or mental anguish or the willful deprivation by a caretaker or one's self of goods or services which are necessary to avoid physical harm, mental anguish, or mental illness.

Department—The Texas Department of Mental Health and Mental Retardation.

Disabled person—A person with a mental, physical, or developmental disability who is:

(A) 18 years of age or older;

or

(B) under 18 years of age and who has had the disabilities of minority removed.

Elderly person—A person 65 years of age or older.

Exploitation—The illegal or improper act or process of a caretaker using the resources of an elderly or disabled person for monetary or personal benefit, profit, or gain.

Mental health or mental retardation authority—A component of the TDMHMR service delivery system designated by the department to direct, operate, facilitate, or coordinate mental health or mental retardation services delivery for a local service area.

Neglect—The failure to provide for one's self the goods or services which are necessary to avoid physical harm, mental anguish, or mental illness or the failure of a caretaker to provide such goods or services.

Registered boarding home—A residence or establishment registered by a mental health or mental retardation authority that, in addition to food and shelter, provides services that meet some need beyond the basic provision of food and shelter to four or more persons who are not related to the owner or operator of the residence or establishment.

§404.104. Investigations of Allegations of Abuse, Neglect, or Exploitation.

(a) Not later than 24 hours following receipt of a report of suspected abuse, exploitation, or neglect, the mental health or mental retardation authority shall initiate a prompt and thorough investigation to determine whether the elderly or disabled person has been or may be abused, exploited, or neglected.

(1) If access to the premises is hindered, the probate court, or the county court when no probate court exists, may authorize entry of the place of residence of the elderly or disabled person.

(2) A peace officer shall accompany the person and shall make a forcible entry if in the opinion of the court such action is necessary.

(b) If it is determined that the elderly or disabled person has been physically abused, the mental health or mental retardation authority shall immediately notify law enforcement.

(c) The mental health or mental retardation authority shall complete a report of the investigation. The report shall include a statement of the allegation, summary of investigative methodology, findings of fact, analysis of evidence, conclusion, and in

confirmed cases, a description of the protective services that were provided to the elderly or disabled person.

(d) The mental health or mental retardation authority shall submit to the director of the Office of Client Services and Rights Protection, Central Office, two copies of the report of the investigation and two copies of the Client Abuse/Neglect Report (form AN-1-A), which is herein adopted by reference as Exhibit A. (Copies of Exhibit A are available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.) The Office of Client Services and Rights Protection shall submit a copy of the report to the division administrator of Adult Protective Services, Texas Department of Human Services.

§404.105. Dissemination of Information. Each mental health or mental retardation authority shall provide copies of this subchapter to each boarding home it registers and shall discuss with boarding home staff the subchapter's implementation.

§404.106. References. Reference is made to the following laws of Texas:

(1) Texas Mental Health and Mental Retardation Act, Texas Civil Statutes, Article 5547-206; and

(2) Human Resources Code, Chapter 48.

§404.107. Distribution.

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

(b) Each mental health or mental retardation authority shall ensure the distribution of this subchapter to each boarding home it registers.

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

TRD-8903474

Pattilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: April 17, 1989

Expiration date: August 15, 1989

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

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Proposed Sections

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

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

TITLE 22 EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 219. Advanced Nurse Practitioner Program

• 22 TAC §§219.1-219.14

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

The Board of Nurse Examiners proposes the repeal of §§219.1-219.14, concerning advanced nurse practitioner programs. The repeals are necessary in order to allow the submission of new sections that will provide more current and appropriate guidelines for educational institutions wishing to implement and operate advanced nurse practitioner programs.

Louise Waddill, executive secretary, has determined that there will not be fiscal implications as a result of enforcing or administering the repeals for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Waddill also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be to permit the adoption of new sections providing current guidelines for institutions to use in implementing and operating advanced nurse practitioner programs. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Louise Waddill, Executive Secretary, Board of Nurse Examiners, Box 140466, Austin, Texas 78714. Comments will be received through June 15, 1989.

The repeals are proposed under Texas Civil Statutes, Articles 4514, §1 and 4518, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether an act constitutes the practice of professional nursing not inconsis-

tent with the provisions of this law. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners.

§219.1. Definitions

§219.2. Philosophy and Objectives.

§219.3. Administration and Organization.

§219.4. Faculty Qualification.

§219.5. Change of Director.

§219.6. Faculty Policies.

§219.7. Faculty Development and Evaluation.

§219.8. Program of Study

§219.9. Curriculum.

§219.10. Curriculum Change.

§219.11. Students.

§219.12. Resources.

§219.13. Records and Reports.

§219.14. Total Program Evaluation.

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

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

TRD-89 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Proposed date of adoption: July 25, 1989

For further information, please call: (512) 835-4880

• 22 TAC §§219.1-219.18

The Board of Nurse Examiners proposes new sections §§219.1-219.18, concerning ad-

vanced nurse practitioner programs. The Board of Nurse Examiners is proposing new sections, concerning advanced nurse practitioner programs to provide more current and appropriate guidelines for educational institutions wishing to operate advanced nurse practitioner programs. The proposed new sections are as a result of recommendations made by an advisory committee consisting of representatives from education, practice, and employers of advanced nurse practitioners.

Louise Waddill, executive secretary, has determined that there will not be fiscal implications as a result of enforcing or administering the sections for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Waddill also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to provide more realistic standards for the educational institutions to meet. The anticipated economic cost to individuals who are required to comply with the sections as proposed will be a one time fee of \$150 for accreditation of new educational programs.

Comments on the proposal may be submitted to Louise Waddill, Executive Secretary, Board of Nurse Examiners, Box 140466, Austin, Texas 78714. Comments will be accepted through June 15, 1989.

The new sections are proposed under Texas Civil Statutes, Article 4514, §1 and 4518, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether an act constitutes the practice of professional nursing not inconsistent with the provisions of this law. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners.

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

Advanced nurse practitioner—A registered professional nurse, currently licensed in the State of Texas, who is prepared for advanced nursing practice by

virtue of knowledge and skills obtained through a post-basic or advanced educational program of study acceptable to the board. The advanced nurse practitioner is prepared to practice in an expanded role to provide health care to individuals, families, and/or groups in a variety of settings including, but not limited to, homes, hospitals, institutions, offices, industry, schools, community agencies, public and private clinics, and private practice. The advanced nurse practitioner functions in a collegial relationship with other health care professionals making independent decisions about nursing needs and interdependent decisions with health care professionals regarding health regimens.

Accredited advanced nurse practitioner program—An advanced educational program for registered nurses which has been accredited by the board or which has the accreditation of a national organization recognized by the board which prepares nurses to function as advanced nurse practitioners.

Advanced nurse practitioner program—A post-basic nursing educational program whose purpose it is to prepare advanced nurse practitioners eligible to be recognized by the board as advanced nurse practitioners.

Board—The Board of Nurse Examiners for the State of Texas.

Clinical learning experiences—Planned learning experiences which involve direct contact with patients/clients under guidance of faculty.

Controlling institution—A college or university responsible for the administration and operation of the program.

Cooperating agency—Agencies outside the institution which are utilized in providing learning experiences for the students.

Didactic learning experiences—Any planned learning activities which take place in the classroom, learning resource center, skills laboratory, or similar settings under the guidance of faculty.

Director—A registered nurse responsible for the administration of the advanced nurse practitioner program and who meets the requirements as stated in §219.6(b) of this title (relating to Faculty Qualifications).

Preceptorship—That portion of the program consisting of clinical experiences under the auspices of qualified preceptors for the purpose of correlating theory to advanced nursing practice and for the purpose of attaining specific learning objectives. The setting shall provide an environment which permits observation and active participation in the delivery of health care.

Qualified preceptor—An advanced nurse practitioner currently recognized by the board who is practicing in an advanced nursing role, or a currently licensed, practicing physician or other health care professional acceptable to the board who is committed to the concept of the advanced nurse practitioner. The functions of the preceptor include supervision, teaching, and evaluation of student's performance in the

clinical setting.

Shall and must—Mandatory requirements.

Should—A recommendation.

§219.2. New Programs.

(a) Phase I: development of a new program.

(1) An institution wishing to establish an accredited advanced nurse practitioner program shall advise the board of its intent in writing.

(2) The institution shall submit two copies of a proposal to the board's office for staff review.

(3) The proposal shall include the following information:

(A) mission of the educational institution;

(B) accreditation status of the educational institution;

(C) type of advanced nurse practitioner program proposed;

(D) documentation of the need for the advanced nurse practitioner program in Texas with rationale for why the program should be established;

(E) potential effect on other advanced nurse practitioner programs in the area;

(F) organizational structure of the educational institution showing the relationship of the proposed advanced nurse practitioner program within the organization;

(G) tentative timetable;

(H) tentative budget plans including evidence of financial resources adequate for planning, implementing, and continuing the advanced nurse practitioner program;

(I) source of potential qualified director and faculty;

(J) source of anticipated student population;

(K) description of support staff for the proposed program;

(L) description of physical facilities; and

(M) description of available

clinical resources.

(4) Following staff review of the proposal, the institution will be notified as to whether or not further clarification and/or revisions are necessary.

(5) At least three weeks prior to a regularly scheduled board meeting, the institution shall submit two copies of the final proposal to the board's office and one copy to each board member.

(6) The proposal will be reviewed at a regularly scheduled board meeting. The board may deny further consideration of the proposal, may defer action on the proposal, or may authorize a site visit and a public hearing.

(7) Following the site visit and public hearing, the board may approve, defer action, or deny the request.

(A) Approval of the proposal to establish an advanced nurse practitioner program will be given when the educational institution has submitted evidence that the advanced nurse practitioner program will be based upon sound educational principles; that valid rationale has been documented for the establishment of the advanced nurse practitioner program; that existing advanced nurse practitioner programs would not be adversely affected; and that the educational institution is prepared to meet the board's requirements as specified in §§219.1-219.17 of this title (relating to Definitions; New Programs; Accreditation; Philosophy and Objectives; Administration and Organization; Faculty Qualifications; Change of Director; Faculty Policies; Faculty Development and Evaluation; Program of Study; Curriculum; Curriculum Change; Students; Educational Resources and Facilities; Clinical Resources; Records and Reports; and Total Program Evaluation).

(B) If approved, the institution will be notified in writing to proceed with the development of the advanced nurse practitioner program as described in Phase II.

(C) If deferred, the institution will be notified in writing of the reason(s) for deferral.

(D) If denied, the institution will be notified in writing of the reason(s) for denial.

(b) Phase II: application for initial accreditation.

(1) The director and faculty shall plan the program of learning.

(2) The director of the advanced nurse practitioner program shall submit two copies of the application for initial accreditation to the board's office for staff review.

(3) Following staff review, the

director will be instructed as to whether or not further clarification and/or revisions of the application are necessary.

(4) At least three weeks prior to a regularly scheduled board meeting, the director shall submit two copies of the final application to the board's office and one copy to each board member.

(5) The board shall review the application and supporting evidence at a regularly scheduled meeting. If the program is based upon sound educational principles and is in compliance with the board's requirements as specified in §§219.1-219.17 of this title (relating to Definitions; New Programs; Accreditation; Philosophy and Objectives; Administration and Organization; Faculty Qualifications; Change of Director; Faculty Policies; Faculty Development and Evaluation; Program of Study; Curriculum; Curriculum Change; Students; Educational Resources and Facilities; Clinical Resources; Records and Reports; and Total Program Evaluation), initial accreditation may be granted.

§219.3. Accreditation.

(a) Types of accreditation.

(1) Initial accreditation. Initial accreditation is granted if the program meets the requirements of the board.

(2) Full accreditation. Full accreditation is granted to an advanced nurse practitioner program after one class has completed the program and is based upon evidence that the program is continuing to meet the board's legal and educational requirements.

(3) Warning.

(A) Issuance of warning. When the board determines that a program is not meeting the legal and educational requirements, the program is issued a warning, is provided a list of the deficiencies, and is given a specified time in which to correct the deficiencies.

(B) Failure to correct deficiencies. If the program fails to correct the deficiencies within the prescribed period, it shall be placed on conditional accreditation.

(4) Conditional accreditation. Conditional accreditation is granted for one year in order to provide additional time to correct deficiencies.

(b) Withdrawal of accreditation. A program with conditional accreditation, which fails to correct the deficiencies within the specified time, shall be removed from the list of state accredited nursing programs.

(c) Accreditation procedure. The continuing accreditation status of each program shall be determined annually by the board either on the basis of a survey visit or

review of annual report.

(1) Survey visit. Each advanced nurse practitioner program will be visited at least every four years after full accreditation has been granted or at any time deemed necessary by the board. A written report of the visit together with the annual report submitted by the director will be reviewed by the board at a regularly scheduled meeting. The decision of the board concerning the accreditation status of the program will be sent to the director and the chief administrative officer of the controlling institution.

(2) Review of annual report. When a program is not visited by a board representative during an academic year, the accreditation status is determined by the board on the basis of the annual report of the program and other pertinent data.

§219.4. Philosophy and Objectives.

(a) The statement of philosophy shall be consistent with that of the controlling institution and shall be developed by the faculty.

(b) The philosophy shall state the beliefs of the faculty regarding the practice of nursing in the advanced nursing role, principles of adult learning, health needs of consumers, and the purpose of the program.

(c) The objectives shall be stated in behavioral terms, be consistent with the philosophy, and shall describe the capabilities of the graduates of the program.

(d) The philosophy and objectives shall serve as the basis for the development, implementation, and evaluation of the program.

(e) The philosophy and objectives shall be periodically reviewed by the faculty.

§219.5. Administration and Organization.

(a) The advanced nurse practitioner program shall be conducted by a college or university and should preferably be associated with a baccalaureate or higher degree nursing program.

(b) The controlling institution shall be accredited by the appropriate accrediting agency.

(c) There shall be adequate financial support commensurate with the financial resources of the institution and appropriate to the needs of the program.

(d) The organizational structure of the controlling institution shall allow implementation of the program.

(e) The authority and responsibility for the program shall be vested in a registered nurse qualified according to §219.6(b) of this title (relating to Faculty Qualifications).

§219.6. Faculty Qualifications.

(a) Each nurse faculty member shall:

(1) hold a current license to practice as a registered nurse in the State of Texas;

(2) hold the minimum of a master's degree in nursing or the equivalent thereof as determined by the board;

(3) be qualified through academic preparation and experience to teach the subject assigned and shall meet the standards for faculty appointment by the controlling institution; and

(4) be recognized as an advanced nurse practitioner by the board, if involved in clinical teaching and supervision.

(b) The director shall:

(1) hold a current license to practice as a registered nurse in the State of Texas;

(2) have demonstrated competence in the administration of educational programs;

(3) hold a master's degree in nursing or the equivalent thereof as determined by the board;

(4) have experience as an advanced nurse practitioner and be recognized by the board as an advanced nurse practitioner; and

(5) have teaching experience in a collegiate nursing program and/or advanced nurse practitioner program.

§219.7. Change of Director. When the director of the program changes, written notification including a vitae must be sent to the board with the assurance that the qualifications listed in §219.6 of this title (relating to Faculty Qualifications) have been met.

§219.8. Faculty Policies.

(a) The faculty of the advanced nurse practitioner program shall function under the same general policies that affect other faculty members in the institution. However, variations of these policies may be necessary because of the nature of the curriculum for which the faculty must have authority and responsibility.

(b) Policies concerning the teaching load for the faculty shall be written. Major activities related to the teaching function must be taken into account and sufficient time provided for the accomplishment of these activities.

(c) The preceptor role and responsibilities shall be defined.

(d) The number of faculty members

shall be determined by such factors as the number of students enrolled, the curriculum plan, activities for which faculty is responsible, and the number and geographic location of the clinical facilities used.

(e) The director and faculty shall have secretarial and clerical assistance adequate in preparation and sufficient in numbers to meet the needs of the program.

(f) The faculty shall be organized in accordance with policies that are in harmony with the controlling institution.

§219.9. Faculty Development and Evaluation.

(a) A program of faculty development shall be offered to encourage and assist faculty in their professional growth and development.

(b) Faculty shall utilize a variety of means to evaluate professional growth and teacher effectiveness, i.e., self evaluation, peer evaluation, student evaluation.

§219.10. Program of Study. The program shall be a minimum of one academic year as approved by the board.

§219.11. Curriculum.

(a) The curriculum shall be planned, implemented, and evaluated by the faculty to reflect the philosophy and objectives of the program and shall be consistent with sound educational principles.

(b) The curriculum content shall include:

(1) didactic and clinical learning experiences necessary to meet the objectives;

(2) concepts and principles critical to advanced nursing practice;

(3) professional and legal implications of the nurse in the advanced role; and

(4) knowledge and skills relevant to practice in the area of specialty.

(c) When clinical preceptorships are used in an advanced nurse practitioner program, the following conditions shall be met.

(1) Written agreement(s) between the cooperating agency and advanced nurse practitioner program shall delineate the functions and responsibilities of the parties involved.

(2) Criteria for selecting clinical preceptors shall be developed in writing.

(3) Written clinical objectives shall be specified and shared with the clinical preceptor prior to the experience.

(4) The designated faculty member shall be responsible for the student's learning experiences and shall meet regu-

larly with the clinical preceptor and student for the purpose of monitoring and evaluating learning experiences.

§219.12. Curriculum Change.

(a) Changes requiring alterations of the present curriculum must be approved by the board prior to implementation. The board shall approve such major changes as:

(1) changes in philosophy and/or objectives which alter present curriculum;

(2) increase or decrease in the length of the program; and

(3) reorganization of the entire curriculum.

(b) The following materials must be submitted with the request for curriculum changes:

(1) rationale for proposed change; this should include the anticipated effect on faculty, students, resources, and facilities;

(2) presentation of current and proposed curriculum;

(3) timetable for implementation of change; and

(4) methods to be used to evaluate the results of the change.

§219.13. Students.

(a) The number of students admitted to the advanced nurse practitioner program shall be determined by the number of qualified faculty and preceptors, adequate educational facilities and resources, and the availability of appropriate clinical learning experiences for students.

(b) Policies for admission, readmission, transfer, promotion, graduation, withdrawal, and/or dismissal shall be written, implemented, and evaluated by faculty. These policies shall be consistent with acceptable educational standards and available to students and faculty.

(c) Students shall be currently licensed in Texas as registered nurses when participating in clinical learning experiences.

(d) There shall be written policies for student grievance, health, safety, and welfare.

§219.14. Educational Resources and Facilities.

(a) The physical facilities shall be adequate to meet the needs of the program in relation to the size of the faculty and the student body.

(b) The director shall have a private office.

(c) Faculty offices shall be conve-

niently located and adequate in number and size to provide faculty with the opportunity for uninterrupted work and privacy for conferences with students.

(d) Space for clerical staff, records, files, and equipment shall be adequate.

(e) Classrooms, laboratories, and conference rooms shall be adequate in number, size, and type for the number of students and the educational purposes for which the rooms are used.

(f) The director and faculty shall have secretarial and clerical assistance adequate in preparation and sufficient in numbers to meet the needs of the program.

(g) The library shall have holdings which are current, appropriate for the content of the curriculum, and sufficient in number for the size of the student body and the needs of the faculty.

(1) Provisions shall be made for regular additions to and deletions from the library collection.

(2) Library facilities and policies shall promote effective use, i.e., environment, accessibility, and hours of operation.

§219.15. Clinical Resources.

(a) It shall be the responsibility of the faculty to select facilities which provide opportunities for students to observe and practice safe, effective nursing care.

(b) Cooperating agencies, which are used for 10% or more of the student's clinical laboratory in any given course, shall be approved by the board prior to use by the program and shall meet the following requirements:

(1) accreditation/approval by the appropriate authority;

(2) a sufficient number and variety of patients/clients to provide learning experiences for all students to achieve the stated objectives;

(3) registered nurses or other health care professionals acceptable to the board directly supervising each clinical unit used for educational purposes;

(4) a sufficient number of registered nurses and other health care professionals to ensure safe and continuous care of patients/clients;

(5) conformance with accepted standards of nursing care and practice; and

(6) available space for clinical conferences.

(c) A faculty member shall be responsible for the clinical instruction of students in only one facility at any one time.

(d) Written agreements between the program and the cooperating agencies shall specify the responsibility of the program to

the agency and the responsibility of the agency to the program. Such agreements shall be developed jointly with the cooperating agency, reviewed periodically according to the policies of the program and the cooperating agency, and include provisions for adequate notice of termination.

(e) Programs planning to use a cooperating agency, which has been approved for another program, must submit a request to the board which shall include a letter from the director of nursing service of the agency stating that the proposed affiliation would not jeopardize programs currently utilizing the agency nor adversely affect the safety of care provided.

(f) A cooperating agency utilized as a clinical laboratory shall submit an annual report on forms provided by the board.

§219.16. Records and Reports.

(a) Accurate and appropriate records shall be maintained which includes, but is not limited to:

- (1) current records of students;
- (2) transcripts of graduates;
- (3) faculty records;

(4) administrative records, including minutes of faculty meetings, annual reports of the program, and school bulletins;

(5) the current curriculum, including philosophy, objectives, course outlines, and if applicable, protocols;

(6) agreements with cooperating agencies; and

- (7) master plan of evaluation.

(b) Records shall be safely stored to prevent loss, destruction, or unauthorized use.

(c) An annual report, in duplicate, shall be submitted to the board by the director on forms provided.

§219.17. Total Program Evaluation.

(a) There shall be a written plan for the systematic evaluation of the total program. The plan shall include methodology, frequency of evaluation, assignment of responsibility, and evaluative criteria. The following broad areas shall be periodically evaluated:

- (1) organization and administration of the program;
- (2) philosophy and objectives;
- (3) curriculum;
- (4) education facilities, resources, and services;
- (5) clinical resources;
- (6) students, achievement;
- (7) graduates, nursing competence; and

(8) faculty's performance.

(b) All methods and instruments used for evaluative purposes shall be periodically reviewed and evaluated.

(c) Implementation of the plan for total program evaluation shall be documented in the minutes.

§219.13. Closing of a Program.

(a) When the decision to close an advanced nurse practitioner program has been made, the director must notify the board and submit a written plan for terminating the program.

(b) The program should continue until all classes, which are enrolled at the time of the decision to close, have graduated. In the event this is not possible, a plan must be developed whereby students may transfer to other accredited programs.

(c) There shall be provision for safe storage of vital school records, including transcripts of all graduates.

(d) All requirements and standards shall be maintained until the last student transfers or completes the program.

(e) The written plan for closing the program shall include the following:

- (1) reason for closing the program;
- (2) date of intended closing;
- (3) academic provisions for students;
- (4) provisions made for access to and safe storage of records; and
- (5) methods to be used to maintain requirements and standards until the program closes.

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

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

TRD-8903530 Louise Waddill
Executive Secretary
Board of Nurse Examiners

Proposed date of adoption: July 25, 1989

For further information, please call: (512) 835-4880

Chapter 221. Advanced Nurse Practitioners

• 22 TAC §221.6

The Board of Nurse Examiners proposes an amendment to §221.6, concerning functions. As a result of recommendations from the advanced nurse practitioner advisory committee, the Board of Nurse Examiners is proposing that §221.6(d) (10) be deleted from the section. The rationale for the proposal is that §221.6(d)(10) is redundant because the law already requires medical supervision of

any delegated medical functions.

Louise Waddill, R.N., Ph.D., executive secretary, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Ms. Waddill also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be to clarify the language. Problems arose in interpretation of this section as it was written. The misinterpretation was the assumption that a nurse practitioner could not practice at all without direct physician supervision. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Louise Waddill, R.N., Ph.D., Executive Secretary, Board of Nurse Examiners, Box 140466, Austin, Texas 78714. Comments may be made through June 15, 1989.

The amendment is proposed under Texas Civil Statutes, Article 4514, §1, which provides the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing, and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

§221.6. Functions.

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

(d) Within the limitations of her or his educational preparation and within written statements of policy, an advanced nurse practitioner may:

(1)-(9) (No change.)

[10 perform medical functions delegated by and done under the control and supervision of a physician licensed by the Texas State Board of Medical Examiners.]

(e) (No change.)

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

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

TRD-8903529 Louise Waddill, R.N., Ph.D.
Executive Secretary
Board of Nurse Examiners

Proposed date of adoption: July 25, 1989

For further information, please call: (512) 835-4880

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services Memoranda of Understanding

• 25 TAC §37.193

The Texas Department of Health proposes new §37.193, concerning a memorandum of understanding (MOU) covering the delivery of services to persons who are deaf. The new section adopts by reference an MOU between the department and the Texas Commission for the Deaf covering access to public health services by persons who are deaf.

The new section is proposed in order to comply with House Bill 550, 70th Texas Legislature, 1987, which requires the department to adopt a memorandum of understanding between the department and the Texas Commission for the Deaf to coordinate the delivery of services to persons who are deaf and to reduce or eliminate gaps in the delivery of services identified in the development of this memorandum. The memorandum of understanding covers each agency's role in providing direct services, interpretive services, case management services, staff development programming, methods for information sharing on health issues, AIDS prevention, safety adoption for residential clients who are deaf, and continued coordination between the agencies in issues related to persons who are deaf.

Stephen Seale, chief accountant III, has determined that for the first five-year period the section as proposed is in effect there will be fiscal implications for state government. The effect on state government will be an additional cost of \$12,400 for the first year the section will be in effect. For the remaining four years, there will be no additional costs. There will be no fiscal implications for local government or small businesses as a result of enforcing or administering the section as proposed.

Mr. Seale also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be that the general public will be better served through the coordination of services to persons who are deaf by the department and the Texas Commission for the Deaf. There is no anticipated economic cost to individuals who are required to comply with the section.

Comments on the proposal may be submitted to Walter P. Peter, Jr., Chief, Bureau of Maternal and Child Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. Comments will be accepted for 30 days from the date of publication of the proposed section.

The new section is proposed under Texas Codes Annotated, the Human Resources Code, §81.017, which requires the Texas Board of Health to adopt by rule a memorandum of understanding between the depart-

ment and the Texas Commission for the Deaf to coordinate services to persons who are deaf; and Texas Civil Statutes, Article 4414b, §1.05, which provide the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§37.193. Memorandum of Understanding Covering the Delivery of Services to Persons Who are Deaf.

(a) The Texas Department of Health adopts by reference a memorandum of understanding (MOU) covering the delivery of services to persons who are deaf. The MOU is entered into between the Texas Department of Health and the Texas Commission for the Deaf.

(b) Copies of the MOU are filed in the office of the Associate Commissioner for Personal Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

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

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

TRD-8903481

Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: July 8, 1989.

For further information, please call: (512) 458-7420

Chapter 145. Long Term Care

Subchapter J. Procedures for Covering Certification and Termination of Certification of Long Term Care Facilities Which Participate in the Title XIX Medical Assistance Program

• 25 TAC §§145.141-145.147

The Texas Department of Health proposes amendments to §§145.141-147, concerning the procedures covering certification and termination of certification of long term care facilities which participate in the Title XIX Medical Assistance Program. The sections are being amended to conform with the Department of Health and Human Services State Operations Manual, Provider Certification, Part Three, Adverse Actions.

The amendments include changing the title of Subchapter J. to substitute the words "termination of certification" in lieu of the word "decertification." This change of terminology would be throughout the document and is utilized in accordance with the revised definitions. In addition, throughout the subchapter, the word "resident" replaces the words "patient or recipient/patient" based on current

terminology used in long term care.

The amendment to §145.143 deletes references to specifically named headings or criteria of the Texas Department of Human Services (Human Services) standards. Instead there will be a reference to all of Human Services standards for certification criteria.

The amendment to §145.144(f)(4)(C) adds federal requirements for termination of certification for repeat deficiencies, deficiencies constituting jeopardy to health and safety, and/or deficiencies which limit a facility's capacity to render adequate care.

The amendment to §145.146 changes the terminology for termination of certification and establishes time frames for certain informal reconsiderations based on actions taken. A new subsection (a)(3) has been established. These amendments are necessary so that the department's rules coincide with the Department of Health and Human Services' termination rules in cases where it is determined that an immediate and serious threat to resident health and safety exists and other Department of Health and Human Services' procedures for termination of certification.

Stephen Seale, chief accountant III, has determined that for each year of the first five years there will be no fiscal implications for state or local government, or for large or small businesses. There will be no fiscal implications for large or small businesses affected by this amendment.

Mr. Seale also has determined that for the first five-year period that the sections as proposed will be in effect the public benefit will be that the department's rules will conform with the federal requirements concerning certification termination procedures which will simplify the appeal process. This will clarify for the public, the long term care facility, and the department the procedures to be followed in processing termination actions. There will be no economic cost to facility residents or the public.

Comments on the proposed sections may be submitted to Richard L. Butler, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register*.

The amendments are proposed under Vernon's Texas Codes Annotated, the Human Resources Code, §32.023, and 42 Code of Federal Regulations, Chapter IV, Subchapter C, which authorizes the Texas Board of Health to adopt rules concerning the certification and termination of certification of long term care facilities participating in the Title XIX Medical Assistance Program under the United States Social Security Act; and Texas Civil Statutes, Article 4414b, §1.05, which provide the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§145.141. Purpose. The purpose of this subchapter is to establish the procedures and practices the Texas Department of Health uses in certifying, terminating certification [decertifying], or taking action

relating to long term care facilities participating in the Medical Assistance Program in the State of Texas under the United States Social Security Act, Title XIX.

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

Program—The Department's Bureau of Long Term Care [and Quality Standards Division].

Termination of Certification [Decertification]—A survey made by the department reveals that the facility is not in compliance with the Title XIX Medical Assistance Program for certification requirements and action is taken to remove certification.

§145.143. Department's General Responsibilities under the Title XIX Medical Assistance Program.

(a) The department will certify to Human Services by means of a survey report and related documentation the level of compliance of each facility with federal and state standards required for the facility classification (Skilled Nursing Facility, Intermediate Care Facility, Intermediate Care Facility for the Mentally Retarded, or any other terminology additions or deletions in the Medicaid Program). [and that each facility does the following:]

[(1) employs a full-time licensed nursing home administrator;

[(2) has in operation an organized nursing service;

[(3) maintains professional planning and supervision of menus and meal service for patients for whom special diets or dietary restrictions are medically prescribed;

[(4) has satisfactory policies and procedures relating to maintenance of medical records;

[(5) has satisfactory policies relating to the administration and distribution of drugs, medications, and biologicals;

[(6) maintains satisfactory policies and procedures relating to physician coverage and emergency medical attention;

[(7) has entered into written agreements with one or more general hospitals under which such hospitals will provide needed diagnostic and other services to patients and under which such hospitals agree to timely acceptance, as patients thereof, of acutely ill patients who are in need of hospital care;

[(8) meets conditions relating to environment and sanitation; and

[(9) meets the applicable codes and requirements for life safety.]

(b) (No change.)

§145.144. Department's Survey Procedure and Practice in Facilities.

(a)-(e) (No change.)

(f) The types of action that a surveyor or survey team can recommend to the program and the criteria for such recommendations are as follows.

(1) Certification is granted when the facility either has no deficiencies or the deficiencies noted individually or in combination neither jeopardize the health or safety of residents [patients] nor are of such character as to seriously limit the facility's capacity to render adequate care.

(2) A compliance (notice of noncompliance) [(probation)] letter is written to a facility when the situation does not immediately jeopardize the resident's [patient's] health and safety but:

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

(3) A hold on vendor payments is recommended when:

(A) (No change.)

(B) deficiencies may be considered a potential threat to resident [patient] health and/or safety but are not widespread;

(C) cited deficiencies do not affect the immediate health and safety of residents [recipient-patients] but are health and/or safety hazards that have a direct or immediate adverse effect on the residents' [recipient-patients'] health, safety, and/or security; or

(D) cited deficiencies regarding intermediate care facilities for the mentally retarded do not affect the immediate health and safety of residents [recipient-patients] but are health and/or safety hazards that have a direct or immediate adverse effect on the residents' [recipient-patients'] health, safety, security, and/or training as outlined in individualized plans of care.

(4) Termination of certification [Decertification] of a facility is based on:

(A) (No change.)

(B) deficiencies which pose an immediate threat to resident [patient] health and/or safety. The program will determine if there is an immediate threat to resident [patient] health and/or safety by using the professional judgment and expertise of department personnel and considering the facts and documentation in the survey report and narrative; or[.]

(C) deficiencies are repeated from the previous certification period or individually or in combination jeopardize resident's health and safety or limit the facility's capacity to give adequate care.

(5) (No change.)

(6) The program may recommend to Human Services that a facility's [facilities] contract be cancelled when cited deficiencies affect the immediate health and safety of residents [recipient-patients].

§145.145. Action by Department on Survey Recommendations. Upon receiving survey recommendations, the program will take action subject to the procedures in §145.146 of this title (relating to Appeals), as follows:

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

(3) The various actions the program can take are:

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

(E) invocation of automatic cancellation clause; [or]

(F) termination of certification [decertification] of facility; and [.]

(G) (No change.)

§145.146. Appeals.

(a) Informal reconsideration.

(1) Prior to the effective date of any termination of certification [decertification, denial of certification,] or invocation of the automatic cancellation clause, the program shall give the facility an informal reconsideration.

(2) Elements of the informal reconsideration are as follows.

(A) The program shall give the facility written notice of the proposed termination of certification [decertification, denial of certification,] or invocation of the automatic cancellation clause, and the findings upon which the action is based. [The notice shall be sent by certified mail at least 30 days prior to the action.]

(B) The facility shall have the opportunity to refute the program's findings in writing. [The facility, if it decides to refute, must mail a written response to the program within 10 days after receiving the program's written notice to decertify, deny certification, or invoke the automatic cancellation clause.] If the facility does not respond during the specified [this time] period, the action will be taken. If there is no response by the facility, the

program is not required to take any other action on the appeals process prior to the proposed action [decertification, denial of certification, or invocation of the automatic cancellation clause].

(C) If the facility does respond as required in subparagraph (B) of this paragraph, the program will give the facility a written affirmation or reversal of the proposed action [decertification, denial of certification, or invocation of the automatic cancellation clause. The program shall send by certified mail its written affirmation or reversal to the facility within 10 days after receiving the facility's refutation].

(3) Time frames for informal reconsiderations and effective dates of proposed actions are as follows.

(A) Termination of certification based on immediate/serious threat to resident health/safety may not exceed 23 calendar days from the date of the findings resulting in the proposal. If the facility decides to refute the findings, a written response must be postmarked within seven calendar days after receiving the program's written notice. If the facility does respond, the program will give the facility a written affirmation or reversal of the proposed action within seven calendar days after receipt of the facility's refutation.

(B) Termination of certification based on repeat deficiencies, deficiencies which limit a facility's capacity to render adequate care, or deficiencies which jeopardize resident health and safety may not exceed 90 calendar days (or expiration of existing certification, whichever is earlier) from the date of the findings resulting in the proposal. If the facility decides to refute the findings, a written response must be postmarked within 10 calendar days after receiving the program's written notice. If the facility does respond, the program will give the facility a written affirmation or reversal of the proposed action within 10 calendar days after receipt of the facility's refutation.

(C) Termination of certification based on invocation of a predetermined automatic cancellation clause may not exceed that predetermined date. If the facility decides to refute the findings, a written response must be postmarked within 10 calendar days after receiving the program's written notice. If the facility does respond, the program will give the facility a written affirmation or reversal of the proposed action within 10 calendar days after receipt of the facility's refutation.

(D) Denial of certification is that action taken to deny initial participation of a new facility or one seeking re-entry after termination. Denial of certification in these cases is effective on the date of determination; however, the facility may refute these findings. A written response must be postmarked within 10 calendar days after receiving the program's written notice. If the facility does respond, the program will give the facility a written affirmation or reversal of the action within 10 calendar days after receipt of the facility's refutation.

(b) Formal hearing.

(1) The facility shall have the opportunity for a formal hearing after the effective date of the termination of certification [decertification], denial of certification, or invocation of the automatic cancellation clause.

(2) A facility desiring a formal hearing shall make such a request to the program, in writing, within 20 days after the effective date of the action [decertification, denial of certification, or invocation of the automatic cancellation clause]. Upon receipt of the request, the program will notify the department's Office of General Counsel to institute formal hearing procedures. Failure of the facility to request a formal hearing within the 20 days shall constitute a waiver of the right to such hearing.

(3) (No change.)

§145.147. Construction of this Subchapter. In all deliberations, the department will construe this subchapter in order to assure quality-of-care standards for long term care facilities [the nursing homes] in the State of Texas and to enforce federal and state standards and regulations governing the Title XIX Medical [Medicaid] Assistance Program in the State of Texas.

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

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

TRD-8903480

Robert A. Maclean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: August 12, 1989.

For further information, please call: (512) 458-7611

Chapter 241. Shellfish Sanitation

Texas Shellfish

The Texas Department of Health proposes the repeal of §§241.21-241.24, concerning Texas shellfish, and proposes new §§241.50-

241.100, concerning Texas molluscan shellfish, defined as oysters, clams, and mussels.

The new sections establish definitions and standards for the classification of shellfish growing areas and the harvesting, processing, and distribution of shellfish. The new sections will update and make clearer explanation of the existing Texas shellfish rules and will implement the requirements and guidelines established in the 1988 *National Shellfish Sanitation Program Manual of Operations*, Parts I and II, published by the Interstate Shellfish Sanitation Conference and the United States Food and Drug Administration.

The new sections have been renumbered to allow for any future expansion of the rules concerning Texas crabs, under Chapter 241 concerning shellfish sanitation.

Stephen Seale, chief accountant III, has determined that for the first five-year period the proposed repeals and new sections are in effect there will be fiscal implications for small businesses as a result of enforcing or administering the repeals and new sections. The effect on small businesses will be the cost to obtain refrigeration capability, estimated to be a one time cost of \$1,500 to \$6,000. The cost of compliance for a small business or a large business not currently in compliance with the sections as proposed regarding refrigeration capability is estimated to range from \$.03 to \$.20 per gallon of shellfish, depending upon the size of the refrigerator needed, its estimated service life, and volume of shellfish processed. There will be no fiscal implications for state or local government.

Mr. Seale also has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the repeals and new sections will be better assurance that shellstock processed in or imported into Texas will be free of disease or other health hazards transmissible by these products. There is no anticipated economic cost to individuals who are required to comply with the repeals and new sections as proposed.

Comments on the proposal may be submitted to Richard E. Thompson, R.S., Director, Division of Shellfish Sanitation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7510. Comments will be accepted for 30 days from the date of publication of this proposal. Public hearings will be held at the County Agriculture building at the fairgrounds on County Road 101, Port Lavaca, Texas, at 7 p.m. on Monday, May 8, 1989; and at the auditorium in the classroom laboratory building, Pelican Island Campus, Texas A&M University, Galveston, Texas at 7 p.m. on Tuesday, May 9, 1989.

• 25 TAC §§241.21-241.24

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

The repeals are proposed under Texas Codes Annotated, the Parks and Wildlife Code, §76.203, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas shellfish; and Article 4414b, §1.05, which provides the Texas

Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§241.21. *Definitions.*

§241.22. *Growing Water Classification.*

§241.23. *Preparation of Shellfish for Marketing.*

§241.24. *Harvesting and Processing Shellfish.*

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

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

TRD-8903515

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

Proposed date of adoption: August 12, 1988

For further information, please call: (512) 463-7236

◆ ◆ ◆
Molluscan Shellfish

• 25 TAC §§241.50-241.100

The new sections are proposed under Texas Codes Annotated, the Parks and Wildlife Code, §76.203, which authorizes the Texas Board of Health to adopt rules concerning the regulation of Texas shellfish; and Article 4414b, §1.05, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§241.50. *Definitions.* The following words and terms, when used in this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

Adequate—That which, in the judgment of the department, is needed to implement these sections and to accomplish the intended purpose in keeping with good public health practice.

Air gap—The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, plumbing fixture or other device and the flood level rim of the receptacle.

Approved—Acceptable to the commissioner of health and the Division of Shellfish Sanitation Control.

Approved area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to be acceptable for harvesting shellfish for direct marketing.

Authorized representative—An em-

ployee of the Department of Health who is designated by the commissioner to enforce provisions of these sections.

Backflow—The flow of water or other liquids, mixtures, or substances into the distributing pipes of a potable supply of water from any source or sources other than its intended source.

Backsiphonage—The flowing back of used, contaminated, or polluted water from a plumbing fixture or vessel or other source into a potable water supply pipe due to negative pressure in such pipes.

Blower—A container for washing shucked shellfish which uses forced air as a means of agitation.

Certificate of compliance (certificate)—A numbered document issued by the Division of Shellfish Sanitation Control which authorizes a person to process shellfish for sale.

Certification—The issuing by the Division of Shellfish Sanitation Control of a numbered document to operate that indicates compliance with these sections.

Certification number—The number assigned by the Division of Shellfish Sanitation Control to each certified shellfish dealer. It consists of a three digit number preceded by the two letter state abbreviation (TX) and followed by the two letter symbol designating the type of operation certified.

Certified laboratory evaluation officer—A person employed by the Texas Department of Health who has met the requirements of the United States Food and Drug Administration and who has been issued a letter of certification to evaluate shellfish laboratories in the State of Texas.

Classes of Shippers—The classes of shippers are as follows.

(A) **Depuration processor (DP)**—A person who receives shellstock from areas designated by the Texas Department of Health and submits such shellstock to an approved controlled purification process. A depuration processor may not conduct a shellfish purification operation in a building or facility in which shellfish are being stored or handled for other purposes, unless the purification operation, including receiving, storage, packing, and distribution areas, is entirely separated from other operations by physical barriers with no connecting openings.

(B) **Repacker (RP)**—A person other than the original certified shucker/packer who repacks shucked shellfish into other containers. A repacker may also repack and ship shellstock. A repacker shall not shuck shellfish.

(C) **Shellstock shipper (SS)**—A person who grows, harvests, buys, or repacks and sells shellstock. A shellstock shipper is not authorized to shuck shellfish nor to repack shucked shellfish. A shellstock shipper may ship properly

packed and labeled shucked shellfish.

(D) **Shucker/Packer (SP)**—A person who shucks and packs shellfish. A shucker/packer may act as a shellstock shipper or repack shellfish originating from other certified dealers.

Closed area—A shellfish growing area where the harvesting of shellfish is temporarily or permanently not permitted. A closed area status is or may be placed on any of the five classified area designations as established in the *National Shellfish Sanitation Program Manual of Operations* as follows: approved; conditionally approved; restricted; conditionally restricted; or prohibited. For the purposes of these sections, a closed area status shall be established by declaring the area to be a POLLUTED AREA.

Commingling—The act of combining different lots of shellstock or shucked shellfish.

Commissioner—The commissioner of health for the State of Texas.

Conditionally approved area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved area is a closed area when the area does not meet the approved growing area criteria. For the purposes of these sections, a closed area status shall be established by declaring the area to be a POLLUTED AREA.

Conditionally restricted area—The classification of a shellfish growing area determined by the Division of Shellfish Sanitation Control to meet restricted area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally restricted area shall be declared to be a POLLUTED AREA. The conditionally restricted area shall be open for transplanting or gathering for depuration only during the times it meets restricted area criteria and is so specified by the Texas Department of Health.

Container—The physical material which is in contact with and/or directly surrounds the shellfish confining them into a single unit.

Controlled purification or depuration—The process of using any approved artificially controlled aquatic environment to reduce the level of bacteria and viruses in live shellstock.

Corrosion resistant materials—Those materials that maintain their original surface characteristics under normal exposure to the foods being contacted, normal use of cleaning compounds and bactericidal solutions, and other conditions of use.

Cross connection—Any physical connection or arrangement between two otherwise separate piping systems, one of which contains potable water and the other con-

taining water of unknown or questionable safety, or steam, gas, or chemical whereby there may be a flow from one system to the other, the direction of flow depending on the pressure differential between the two systems.

Dealer—A commercial shellstock shipper, repacker, shucker/packer, or depuration processor.

Department (TDH)—The Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 or its successor.

Depuration—See definition for controlled purification.

Depuration plant—A facility of one or more depuration units.

Depuration unit—A tank or series of tanks supplied by a single process water system.

Division of Shellfish Sanitation Control (DSSC)—The division of the Texas Department of Health to which responsibility to classify shellfish growing waters, to issue certificates for the interstate shipment of shellfish, and to regulate harvesting, processing, and shipping of shellfish is delegated, in accordance with the *National Shellfish Sanitation Program (NSSP) Manual of Operations*, Parts I and II.

Dry storage—The storage of shellstock out of water.

Easily cleanable—A surface which is readily accessible, and is made of such materials, has such a finish, and is so fabricated that residues may be effectively removed by normal cleaning methods.

Food and Drug Administration (FDA)—The federal agency in which regulation of foods, including the Cooperative Shellfish Program, is vested.

Food contact surfaces—Those surfaces with which shucked shellfish come in contact and those surfaces from which drainage onto surfaces that come in contact with shucked shellfish ordinarily occurs during the normal course of operations. Food contact surfaces includes utensils and food contact surfaces of equipment.

Gatherer—A person who takes shellfish by any means from a growing area designated by the commissioner for delivery only to a depuration plant.

Growing area—An area which supports or could support live shellfish.

Harvester—A person who takes shellfish by any means from any growing area for delivery to a certified dealer or for transplanting purposes.

Heat shock—The process of subjecting shellstock to any form of heat treatment, such as steam, hot water, or dry heat for a short period of time prior to shucking to facilitate removal of the meat from the shell without substantially altering the physical or organoleptic characteristics of the shellfish.

Internal temperature—The actual temperature of the shellfish meat, as opposed to the air temperature of the area where the shellfish are stored.

Interstate Certified Shellfish Shippers List (ICSSL)—The listing, published by

FDA, of dealers certified by the states to pack and ship shellfish.

Label—Any written, printed, or graphic matter affixed to or appearing upon any container of shellfish.

License—The document issued by the Texas Parks and Wildlife Department, under the Texas Codes Annotated, Texas Parks and Wildlife Code, Chapters 47 or 76, which authorizes a person to harvest and transport shellfish for commercial sale.

Lot of shellstock—A collection of containers of shellstock of no more than one days' harvest from a single defined growing area by one or more harvesters.

Lot of shellstock for depuration—Shellstock gathered from a particular area at a particular time and delivered to one depuration plant.

Lot of shucked shellfish—A collection of containers of no more than one days' shucked shellfish product produced under conditions as nearly uniform as possible, and designated by a common container code or marking.

Marine toxins—Poisonous compounds accumulated by shellfish feeding upon toxic microorganisms. The poisons may come from dinoflagellates, e. g. *Gonyulax catenella*, *G. tamarensis*, and *Ptychodiscus brevis*.

Market shellfish—Shellfish which are, may be, or have been harvested and/or prepared for sale for human consumption as a fresh or frozen product.

National Shellfish Sanitation Program (NSSP)—The cooperative state/Food and Drug Administration/industry program enabling the classification of shellfish growing waters and the certification of interstate shellfish shippers as described in the NSSP Manual of Operations, Parts I and II, or its successor program.

Pack—All activities involved in placing shellfish in containers.

Person—An individual, partnership, corporation, association, or other legal entity.

Poisonous or deleterious substance—A toxic compound occurring naturally or added to the environment that may be found in shellfish and for which a regulatory tolerance limit has been or may be established to protect public health. Examples of naturally occurring substances would be paralytic shellfish toxins and trace elements geologically leached from the environment, such as mercury. Examples of added substances would be agricultural pesticides and polynuclear aromatics from oil spills.

Polluted area—The declaration of an area determined by the DSSC to be unacceptable for harvesting of shellfish for direct marketing. Shellfish may not be harvested from a polluted area unless they are subjected to transplanting or controlled purification in accordance with these sections and the permitting requirements of the Texas Parks and Wildlife Department, §57.231 of Title 31 (relating to Transplant Permits) and §57.232 of Title 31 (relating to

Harvest Permits).

Principal display panel—The part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions for sale.

Processor—A person who depurates, shucks, packs or repacks shellfish.

Process batch—A quantity of shellfish used to fill each separate depuration unit.

Process water—The water in depuration tanks during the time that shellfish are being depurated.

Prohibited area—The classification of a shellfish growing area determined by the DSSC to be unacceptable for the transplanting, gathering for depuration, or harvesting of shellfish. The only shellfish removal from a prohibited area allowed is for the purposes of depletion.

Restricted area—The classification of a shellfish growing area determined by the DSSC to be unacceptable for harvesting of shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area shall be declared to be a POLLUTED AREA. A restricted area may be closed for transplanting or gathering for depuration when the DSSC determines that the area does not meet the restricted area criteria established in the NSSP.

Safe materials—Articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in their becoming a component or otherwise affecting the characteristics of any food.

Sanitary survey—The evaluation of all factors having an effect on the sanitary quality of a shellfish growing area, including sources of pollution, the effects of wind, tides and currents in the distribution and dilution of the polluting materials, and the bacteriological quality of the water.

Sanitize—The adequate treatment of food contact surfaces by a process that is effective in destroying vegetative cells of microorganisms of public health significance, and in substantially reducing numbers of other undesirable microorganisms, but without adversely affecting the product or its safety for the consumer.

Shall—The term used to state mandatory requirements.

Shellfish—All edible species of oysters, clams, and mussels either shucked, in the shell, fresh or fresh frozen, whole or in part, as defined in the NSSP.

Shellstock—Shellfish in the shell.

Shucked shellfish—Shellfish, whole or in part, from which one or both shells have been removed.

Texas business address—A permanent structure on land within the jurisdiction of the State of Texas where aquatic products or orders for aquatic products are received or where aquatic products are sold, but does not include a boat or any type of floating device, a public cold storage vault, the portion of a structure that is used as a residence, or a vehicle of any kind.

Texas Parks and Wildlife Department (TPWD)—The Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, or its successor state agency, having the responsibility for the enforcement of laws concerning harvesting and depletion of the resource in accordance with the NSSP Manual of Operations, Part I.

Transaction record—A form(s) used to document each purchase or sale of shellfish at the wholesale level.

Transplanting—Moving of shellfish from one growing area to another for improving growth, stocking depleted areas and leases, natural cleansing, or for other aquaculture purposes.

Wet storage—The temporary storage of shellfish from approved sources, intended for marketing, in containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

§241.51. Growing Area Classification.

(a) Shellfish growing areas shall be classified in compliance with the guidelines established in the NSSP Manual of Operations, Part I.

(b) Approved harvesting areas are those areas specifically approved by TDH as meeting the growing area criteria established in the NSSP for approved areas under all conditions except unusual situations. Approved area classifications shall be established as the result of a sanitary survey. Shellfish may be taken from such areas for direct marketing. An approved classified growing area may be temporarily made a closed area when a public health emergency such as a hurricane or flooding is declared. For the purposes of these sections, a closed area status shall be established by declaring the area to be a POLLUTED AREA.

(c) Conditionally approved areas are those areas meeting the criteria for an approved area except when certain conditions occur. These conditions must be predictable and must occur with a frequency which will result in the area being acceptable for harvesting for a period of time which will justify the additional monitoring required. The conditions must be outlined in a management plan which provides for monitoring and establishes the specific trigger points that result in closing the area to harvesting. When the conditions occur that result in the need for closing the area, it shall be declared to be a POLLUTED AREA until verification by TDH that conditions have returned to normal and the shellfish from the area are again safe for direct market harvesting. The time the area is declared a POLLUTED AREA shall include a cleansing time for the shellfish after conditions have returned to normal and, in the judgement of the DSSC, shellfish feeding activity has resumed. Shellfish may be harvested for direct marketing only during the time the area is not declared to be a POLLUTED AREA. Shellfish may be

transplanted or gathered for depuration only in accordance with these sections and the permitting requirements of TPWD established in §57.231 of Title 31 (relating to Transplant Permits) and §57.232 of Title 31 (relating to Harvest Permits). Shellfish may not be harvested or gathered from these areas when they are declared to be a POLLUTED AREA without subjecting them to transplanting or controlled purification.

(d) Polluted areas are areas that have not been surveyed, are subject to unpredictable pollution, or that otherwise do not meet the requirements to allow harvesting of shellfish for direct marketing. The areas in this State corresponding to the classifications restricted, conditionally restricted, and prohibited, as established in the NSSP Manual of Operations, Part I, are declared POLLUTED AREAS to prevent harvesting for direct marketing. Shellfish may be transplanted or gathered for depuration from the POLLUTED AREAS meeting the restricted or conditionally restricted criteria during the periods established by TDH, and subject to permitting by TPWD. Transplanting or gathering for depuration shall not be allowed from those areas which have not been surveyed or which do not meet the criteria to be classified as restricted or conditionally restricted and therefore are classified as PROHIBITED AREAS. Shellfish taken from PROHIBITED AREAS shall not be used for any human food purposes.

§241.52. Transplanting and Gathering for Depuration.

(a) Transplanting to approved or conditionally approved areas may occur, provided that permission is first obtained from TPWD and the necessary permits are granted. Upon completion of the transplanting operations, the transplantor shall notify TDH of the quantity of shellstock transplanted, the origin of the shellstock, the reef or lease upon which the shellstock were transplanted (including the most precise location of the shellstock as is possible), and the date the transplant permit expired or was cancelled. No transplanted shellfish may be harvested for marketing during the 14 days following the date of expiration or cancellation of the transplant permit. All boats and equipment used to transplant shellfish shall be thoroughly cleaned and sanitized prior to being used for any subsequent shellfish harvesting.

(b) Gathering shellfish for depuration may occur in those areas designated by TDH, provided that permission is first obtained from TPWD and the necessary permits are granted. All activities related to controlled purification or depuration shall be carried out in compliance with the requirements established in these sections.

§241.53. Certification and Enforcement Procedures.

(a) No shellfish shall be offered for sale for food in the State of Texas unless taken from areas approved by the commissioner, or obtained from sources outside the state approved by TDH. If obtained from sources outside of the state, the shellfish must be from areas approved by the State authorities having jurisdiction and must be obtained from shellfish dealers currently certified by the appropriate state authority. Shellfish obtained from sources other than those outlined in this section shall be considered unfit for human consumption. No person shall engage in the gathering, harvesting, shucking, packing, or repacking of shellfish for sale without having complied with these sections. No person shall engage in any activity requiring a certificate under these sections without having applied for and obtained a numbered certificate of compliance pertaining to the particular activity from the commissioner. Any shellfish in the possession of a person holding a valid license issued by TPWD under the Texas Parks and Wildlife Code Chapters 47 or 76, shall be considered to be offered for sale for food in Texas.

(b) Prior to construction of a new shellfish plant, or major remodeling of an existing shellfish plant, complete, legible plans showing the floor plan of the building, with dimensions drawn to scale, location of equipment, doors, floor drains, etc., and written, complete operational procedures for all phases of the activity, including flow of the product, shall be submitted to the DSSC for review and approval. A legibly written or typed application on forms provided by TDH must be filed with the DSSC before gathering, harvesting for market, or operation of the plant begins each fiscal year. A certificate of compliance and number shall be issued by the commissioner only after an inspection of the plant by an authorized representative has revealed that the plant and operations are in compliance with these sections. The inspection of a previously certified plant which has exhibited operational problems or violations of operational requirements of these sections shall not be conducted until written, complete operational procedures for all phases of the activity, including flow of the product, are submitted to the DSSC for review and approval. Shellfish operations at the plant shall not begin until the shellfish certificate issued by the commissioner has been received and posted at the plant. Each certificate of compliance shall expire automatically the first day of July following the date of issue. Certificates of compliance shall not be transferable.

(c) After a dealer is certified, unannounced inspections shall be conducted at any time the DSSC has reason to believe the dealer may be in operation and at such frequency as may be necessary to assure

that adequate operational and sanitary conditions are maintained. A copy of the completed inspection form listing the noncompliance items observed along with any necessary explanation or recommendation shall be provided to the most responsible individual present at the firm at the conclusion of the inspection. Shellfish inspections and DSSC forms shall comply with the requirements established in the current NSSP Manual of Operations.

(d) The DSSC may initiate procedures to revoke a certificate of compliance as follows.

(1) The procedures, including the opportunity for a hearing prior to revocation, shall be in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and TDH formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(2) The grounds for revocation shall be one or more of the following:

(A) inspection results indicate **unsatisfactory** conditions in the plant or the **existence** of a public health hazard; or

(B) the certificate holder or agent **refuses** to allow an inspection or otherwise **interferes** with the authorized TDH representative in the performance of his or her duties.

(e) The commissioner or his designee may revoke a certificate of compliance prior to a hearing as follows.

(1) The grounds for revocation shall be one or more of the following:

(A) the shellfish **create** or appear to create an imminent hazard to public health;

(B) the certificate holder or agent **refuses** to allow an authorized TDH representative to inspect the facilities and premises when the representative has reason to believe that an imminent hazard to public health may exist;

(C) cooling temperatures **violate** the requirements of these sections;

(D) pathogenic bacteria are **isolated** in any sample; or

(E) sewage becomes **accessible** to flies or other insects, rodents, or other vermin.

(2) Immediately after a revocation, the commissioner or his designee shall give the certificate holder the opportunity for a hearing in accordance with TDH formal hearing procedures in Chapter 1 of this

title (relating to Texas Board of Health).

(f) After certification of a facility, inspections shall be conducted at least three times each six months. Upon finding a violation of these sections, an authorized representative of TDH shall provide a written description of the violations as provided in these sections. Any violation of the same requirement found on a consecutive inspection may result in certificate revocation in accordance with subsection (d) of this section.

(g) A person whose certificate has been revoked may not process any shellfish until the DSSC is satisfied that all necessary corrections have been made. A new certificate will not be issued until an inspection establishes that the firm is in full compliance with all applicable criteria of these sections. A person whose certificate has been revoked shall not apply for a new certificate for at least 30 days from the effective date of revocation.

(h) Should the commissioner deem it reasonably necessary for the enforcement of these sections, he is empowered to require of each person holding a certificate to post and maintain with him a good and sufficient bond, with a corporate surety or two personal sureties approved by the commissioner, or to make a cash deposit in a form acceptable to the commissioner. The bond will be posted or the cash deposited on the condition that the certificate holder will faithfully comply with all legal requirements imposed by virtue of the law and that, failing such, the certificate holder or his surety will pay as forfeiture a sum of at least \$1,000.

(i) By acceptance of a certificate, the holder agrees to save, hold harmless, and indemnify the State of Texas, TDH, and its employees against any and all liability, claims, or losses for property damage or personal injury which result in whole or in part from the certificate holder's activities. The State of Texas shall not be held liable for financial losses incurred by the shellfish transplanters, gatherers, harvesters, plant supervisors, or plant owners due to failure of the shellfish activity, confiscation of shellfish, loss of shellfish, or other reasons.

§241.54. Harvesting and Handling Shellstock.

(a) Boats and trucks.

(1) All boats used for harvesting or transporting shellstock and all trucks used for dry storing or hauling shellstock shall be constructed, operated, and maintained so as to prevent contamination, deterioration, or decomposition of the shellstock and shall be kept clean. All shellfish boats or trucks shall be subject to approval by the commissioner or his duly authorized representative.

(2) Lecks and storage bins shall be constructed and located so as to prevent

bilge water or polluted over board water from coming into contact with the shellstock.

(3) Bilge pump discharges shall be located so that pumpage will not contaminate shellstock or the boat.

(4) Body waste shall not be discharged overboard from any boat at any time.

(5) Portable toilets shall be provided on each boat, shall be used only for the purpose intended, and shall be secured and located so as to prevent contamination of the shellfish by spillage or leakage.

(6) An adequate supply of toilet paper and hand cleanser and/or sanitizer shall be provided on each boat.

(7) The contents of portable toilets shall be emptied only into an approved sewage disposal system, and the portable toilets shall be cleaned before being returned to the boat. Facilities used for cleaning food processing equipment shall not be used for cleaning portable toilets.

(8) Sacks or other containers used for storing shellstock shall be clean and fabricated from safe materials. Storage areas shall be constructed of nontoxic materials.

(9) Boat decks, truck floors, and storage bins shall be kept clean with potable water or water from an approved growing area and shall have effective drainage.

(10) Adequate coverings shall be provided on harvest boats to protect shellstock from exposure to hot sun, birds, and other adverse conditions.

(11) Portions of boats or trucks (decks, storage bins, floorbeds, etc.) and all other equipment (shovels, wheelbarrows, rakes, etc.) coming in contact with shellstock during handling or transport from polluted areas to approved areas for relaying shall be thoroughly cleaned and sanitized immediately after unloading before they are used to transport or handle shellfish from approved areas.

(12) Commercial harvesters shall be required to deliver shellstock to a certified dealer within the day the shellstock is harvested. For this purpose a day shall be considered to be 12 a.m. to 12 a.m. Delivery of shellstock is considered to be transfer of the shellstock from the boat to the dock and acceptance by the certified dealer. Commercial harvesters shall sell their shellstock only to a currently certified shellfish dealer. The certified dealer shall place a properly completed tag on each sack immediately upon accepting control from the harvester.

(13) Shellstock shall be placed under mechanical refrigeration at air temperatures between 45 Fahrenheit and 35 Fahrenheit within one hour of unloading from the boat. Mechanical refrigeration fa-

cilities shall be adequate in size and cooling capacity to refrigerate all shellstock on the premises. Each facility shall be equipped with an automatic temperature regulating control and indicating thermometer installed to accurately measure, within three degrees, the temperature in the warmest location in the storage compartment.

(14) Refrigerated shellstock shall be maintained at internal temperatures between 45 Fahrenheit and 35 Fahrenheit. After initial refrigeration, shellstock removed from refrigeration shall not be permitted to remain in air temperatures above 45 Fahrenheit for more than two hours, and shall not be permitted in air temperatures above 70 Fahrenheit at any time. The internal air temperature in trailers shall be at or below 45 Fahrenheit when shellstock loading begins.

(15) Trucks used to transport shellstock shall have the storage area constructed of a nontoxic, smooth, impervious material so as to protect the shellfish from contamination and shall be kept clean. Shellstock, other than for delivery to a shucking plant within approximately 50 miles or approximately one hour travel time, shall be transported in mechanically refrigerated trucks that can maintain an air temperature between 45 Fahrenheit and 35 Fahrenheit, shall be palletized, and shall be arranged to allow maximum air circulation. Shellstock storage areas shall be similarly constructed.

(16) Dogs, cats, or other animals shall not be permitted on vessels, in vehicles, or in any other area where shellstock is held or transported.

(b) Washing of shellstock.

(1) Shellstock shall be washed reasonably free of bottom sediments and detritus at the time of harvest or as soon after harvesting as is feasible. Washing shellstock shall be the responsibility of the harvester.

(2) Water used for washing shellstock shall be obtained from an approved growing area, or from other safe sources approved by TDH.

(c) Shellstock packing and identification.

(1) Sacks, boxes, and other shellstock packing containers shall be clean and fabricated from safe material.

(2) A shellfish harvester shall sack all shellstock prior to delivery to a certified dealer.

(3) The initial certified shellfish dealer shall securely affix an approved, durable, waterproof, tag or label to each container of shellstock immediately upon accepting control of the shellstock. This tag or label shall remain on the container during transport and storage.

(4) The certified dealer's tags or

labels shall contain the following information:

(A) the name of the certified business as it appears on the certificate issued by the DSSC;

(B) the address of the business, including at least the city and state;

(C) the complete certification number assigned by the DSSC;

(D) the most precise identification of the harvest location as is practicable;

(E) the date of harvesting;

(F) the type of shellstock; and

(G) the name of the harvester or the harvest boat.

(5) All information shall be permanently printed on the tags or labels by the printing company, except the date of harvest, harvest location, and the name of the harvester or harvest boat, which shall be added by the certified dealer, before the tags are affixed to the container. All information either printed or added to the tag or label must be done using a permanent type ink and shall not be altered or changed after being entered on the tag. The certification number shall only be complete and valid if it has a proper state two letter abbreviation, followed by a three digit number, followed by a two letter abbreviation for the type of operation the dealer is certified to perform, (SP for shucker/packer, RP for repacker, SS for shellstock shipper, or DP for depuration plant).

(6) The certified dealer shall accept responsibility for the shellstock at the time the tag is attached to the sack.

§241.55. Wet Storage.

(a) Source and shipping.

(1) Shellfish for wet storage shall be harvested only from approved or conditionally approved areas.

(2) Shellfish for wet storage shall be harvested, identified and shipped in accordance with applicable requirements of these sections.

(b) Storage facilities.

(1) Each wet storage site or facility shall be evaluated and approved annually by the DSSC on the basis of an evaluation of the nearshore site or the facilities plan and operating procedures for an onshore operation submitted by the dealer and an inspection of the storage site or

facility. Factors to be considered include, but are not limited to, the following:

(A) the sanitary survey of the nearshore storage site, with special consideration of potential intermittent sources of pollution;

(B) the location of nearshore storage sites and floats;

(C) a plan giving the design of the onshore storage facility, source of water to be used for wet storage, and details of any water treatment system; and

(D) the purpose of the wet storage operation, such as holding, conditioning, or salinization, and any species specific physiological factors that may affect design criteria

(2) Wet storage is practiced only in strict compliance with provisions in the written approval for the wet storage operation given by the DSSC.

(3) Nearshore areas used for wet storage shall meet the NSSP approved area criteria at all times shellfish are being held for direct marketing.

(4) Each onshore wet storage facility shall meet the following design, construction, and operating requirements.

(A) Effective barriers such as roofs, walls, screens, and doors shall be provided to prevent entry of birds, animals, and vermin into the area.

(B) Floors, walls, and ceilings shall be constructed, and lighting, plumbing, and sewage disposal systems shall be installed to comply with these sections.

(C) Storage tanks and related plumbing shall be fabricated of safe material and are easily cleanable. Tanks shall be constructed so as to be easily accessible for cleaning and inspection, shall be graded to drain, and shall meet food contact surface requirements. Plumbing shall be designed and installed so that cleaning and sanitizing will be effective.

(D) Where necessary, a water treatment system shall be installed which provides an adequate quantity and quality of water to carry out the intended purpose of the wet storage operation and the treatment does not leave residues that may interfere with the process. The quality of the water prior to final disinfection shall be no less than for a restricted area.

(E) For water receiving ultra-violet disinfection, turbidity shall not ex-

ceed 20 nephelometric turbidity units (NTUs) measured in accordance with the publication titled *Standard Methods for the Examination of Water and Wastewater*, published by the American Public Health Association.

(F) Incoming water supplied to wet storage tanks shall have no detectable levels of coliform organisms as measured by the standard five tube most probable number (MPN) test for drinking water. However, water from approved growing areas may be used in wet storage tanks without disinfection if the system is of continuous flow through design and provided that the nearshore water source used for supplying the system meets the NSSP approved area bacteriological criteria at all times that shellfish are being held for direct marketing.

(G) Shellfish shall be thoroughly washed with water from an approved source and culled to remove dead, broken, or cracked shellfish prior to wet storage in tanks.

(H) Shellfish from different harvest areas shall not be commingled during wet storage in tanks.

(I) Bivalve mollusks shall not be commingled with other species in the same tank. Where multiple tank systems use a common water supply system for bivalve mollusks and other species, process water shall be effectively disinfected prior to entering tanks containing the bivalve mollusks.

(J) Tanks, lines, pumps, and other equipment shall be cleaned and sanitized as necessary to prevent contamination of the tank and water.

(K) Disinfection units shall be cleaned, serviced, and tested as frequently as is necessary to assure effective disinfection. A water sampling schedule shall be included in the firm's operating procedures and the water shall be tested according to the schedule. If the water supply is from a source meeting restricted area criteria, the sampling schedule shall require daily water testing by an approved laboratory.

(L) Salt added to increase salinity or produce synthetic seawater shall be free of any levels of poisonous or deleterious substances which may contaminate the shellfish.

§241.56. Plant Location, Grounds, and Arrangements.

(a) Processing and shipping facilities

shall be so located that they will not be subjected to flooding by ordinary high tides. If plant floors are flooded, all operations shall be discontinued and the DSSC shall immediately be notified of the flooding. No operations may occur until waters have receded, the building is thoroughly cleaned and sanitized, and the facilities have been inspected by an authorized representative of TDH.

(b) The grounds about a plant under the control of the operator shall be free from conditions which may result in the contamination of shellfish, including, but not limited to, the following:

(1) improperly stored equipment, litter, waste, refuse, and uncut weeds or grass within the immediate vicinity of the plant buildings or structures that may constitute an attractant, breeding place, or harborage for rodents, insects, and other pests;

(2) excessively dusty roads, yards, or parking lots that may constitute a source of contamination in areas where shellfish are exposed; or

(3) inadequately drained areas that may contribute contamination to shellfish products through seepage or footborne filth, and by providing a breeding place for insects or microorganisms.

(c) If the plant grounds are bordered by grounds not under the operator's control of the kinds described in subsection (b) of this section, care must be exercised in the plant by inspection, extermination, or other means to effectively exclude pests, dirt, and other filth that may be a source of shellfish contamination.

(d) Shucking and packing operations shall be carried out in separate rooms so that there is no likelihood of the shucked product or packing room equipment being contaminated by splash or by other means from adjacent areas.

(e) Other operations which could result in contamination of shellfish shall not be conducted in the same area where shellfish are being processed. Only shellfish processing shall be allowed in any portion of the plant after the plant is approved for certification.

(f) Adequate space shall be provided to place equipment and to store materials in order to assure sanitary operations and safe shellfish production. Fixtures, ducts, and pipes shall not be suspended over food processing or storage areas or over areas in which containers or utensils are stored or washed. Aisles or working spaces between equipment, and between equipment and walls, shall be unobstructed and adequately wide to permit employees to perform their duties without contaminating shellfish or food contact surfaces with clothing, personal, or other contact.

(g) Because shucking and packing

operations occur in separate rooms, a delivery window shall be provided so that shuckers do not enter the packing area. The delivery window shall be equipped with a corrosion resistant shelf constructed of smooth, easily cleanable materials which can be effectively sanitized. The shelf shall drain toward the shucking room and, if necessary, be curbed on the packing room side. The delivery window shall stay closed, except when passing a shucking bucket through it.

(h) Storage facilities which have adequate capacity for storing clothing, aprons, gloves, and other personal articles of the employees shall be provided outside the food processing area.

§241.57. Dry Storage and Protection of Shellstock.

(a) The storage area floor shall be impervious to water, free of cracks and uneven surfaces that create sanitation problems and interfere with drainage, and graded to assure complete and rapid drainage of water away from the shellfish.

(b) Walls and ceilings of shellstock storage rooms shall be smooth, white colored, and constructed of material that will not deteriorate under repeated washing.

(c) Shellstock storage areas shall be constructed so they will not receive floor drainage from other portions of the plant. Shellstock shall be stored in such a protected manner and at an adequate height (minimum four inches) off the floor to prevent them from coming into contact with water which might accumulate on the floor or from splash by foot traffic, cleaning, or other activities. Shellstock storage areas shall not serve as an entry way to other areas of the establishment.

(d) Conveyances or devices used in transporting shellstock shall be constructed, maintained, and handled in a way that prevents contamination of the shellstock. Where overhead monorails or conveyers are used, hydraulic fluid or lubricants shall not leak or drip onto the shellfish or conveyance surfaces.

(e) Shellstock shall be refrigerated in compliance with §241.54 of this title (relating to Harvesting and Handling Shellstock).

(f) Lots of shellstock from different sources or harvest areas shall be kept separated to prevent commingling.

§241.58. Floors, Walls, and Ceilings.

(a) Floors shall be constructed of smooth, easily cleanable, corrosion resistant, impervious material.

(b) The floor surface shall be graded to drain quickly and shall be free from cracks and uneven surfaces that create sanitation problems and interfere with

drainage. Junctions between floors and walls shall be impervious to water. Floors shall be kept clean and maintained in good repair.

(c) The interior surfaces of rooms shall be smooth, washable, easily cleanable, corrosion resistant, impervious, white colored, and shall be kept clean and in good repair. The interior surfaces shall be constructed and maintained so as to prevent contamination of shellfish during holding or processing.

§241.59. Insect and Vermin Control Measures.

(a) Openings to the outside shall be effectively protected against the entry of vermin and insects by tight fitting, outward opening, self-closing doors; closed windows; effective screening; controlled air currents; or other means. Screening material shall not be less than 16 mesh per inch.

(b) Insects, rodents, and other vermin, or evidence of their infestation, shall not be present.

(c) Necessary internal insect and vermin control measures shall be used, and such measures shall be in compliance with all state and federal rules. The use of insecticides and rodenticides shall be permitted only under such precautions and restrictions as will prevent the contamination of shellfish or containers with illegal residues, and will cause no health hazards to employees.

§241.60. Lighting.

(a) Safe and adequate lighting shall be provided in all areas.

(b) Light bulbs, fixtures, and skylights or other glass suspended over exposed shellfish shall be of a safety type or shall otherwise be protected to prevent food contamination in case of breakage.

§241.61. Heating and Ventilation.

(a) Working rooms shall be adequately ventilated and heated or cooled. Adequate ventilation shall be provided to minimize odors, noxious fumes, vapors, or condensation (including steam) in areas where shellfish may become contaminated. Operation of cooling, heating or ventilating equipment shall not create conditions that may cause shellfish to become contaminated.

(b) Processors who wish to handle shellfish when the daily temperature inside the plant exceeds 70 Fahrenheit shall have their facilities cooled with mechanical refrigeration adequate to maintain the internal air temperature at or below 70 Fahrenheit.

§241.62. Water Supply.

(a) Potable water shall be from a safe source, protected from contamination, and the water supply system shall be constructed, maintained, and operated according to applicable state laws.

(b) Running water shall be provided at an adequate temperature and pressure in all areas where needed to process food, clean equipment, utensils, or containers, and supply sanitary facilities.

(c) Hot and cold water shall be provided through a mixing valve at each compartment of every three compartment sink and at each hand washing lavatory.

§241.63. Plumbing, Sewage, and Related Facilities.

(a) Plumbing shall be installed in compliance with applicable state laws, and shall be of adequate size and design to:

(1) carry adequate quantities of water to required locations throughout the plant;

(2) properly convey sewage and liquid disposable waste from the plant;

(3) ensure that the water supplies and food contact surfaces are not contaminated as a result of an inadequate plumbing system; and

(4) provide adequate floor drainage in all areas where floors are subject to flooding type cleaning or where normal operations discharge water or other liquid waste on the floor. Drainage outlets shall be constructed and maintained so as to prevent the possible entrance of insects and rodents.

(b) There shall be no cross connections between the approved pressure water supply and water from an unapproved source, and there shall be no fixtures or connections through which the approved pressure supply might be contaminated by backsiphonage. Adequate devices approved by the appropriate regulatory agency shall be installed to protect against backflow and backsiphonage at all fixtures and equipment where the air gap between the water supply inlet and the fixture's flood level rim is less than twice the diameter of the water system inlet. All submerged inlets, including hoses attached to faucets, shall be equipped with a backflow prevention device. If booster pumps are connected directly to the potable water supply, the pumps shall be equipped with a low pressure cutoff device or equivalent method to prevent backsiphonage.

(c) Hand washing facilities shall be adequate in number and size for the number of employees, convenient to the work areas, and so located that the person responsible for supervision can readily observe that em-

ployees wash their hands before beginning work and after each interruption. There shall be at least one hand washing lavatory located in the shucking room. There shall be at least one hand washing lavatory in the packing room for use by packing room workers. Three compartment sinks used for washing and sanitizing equipment and utensils shall not be used for hand washing. There shall be at least one three compartment sink located in the packing room. This sink shall be of adequate size to completely immerse and properly clean equipment and utensils.

(d) Hand washing lavatories shall be provided with hot water of at least 100 Fahrenheit from either a controlled temperature source with a maximum temperature of 115 Fahrenheit, or from a hot and cold mixing or combination faucet. Steam water mixing valves or steam water combination faucets shall not be acceptable.

(e) A supply of hand cleansing soap or detergent shall be available at each hand washing facility. A supply of disposable towels or a suitable hand drying device that provides heated air shall be conveniently located near each hand washing facility. Common towels shall be prohibited. Where disposable towels are used, easily cleanable waste receptacles, with covers, shall be conveniently located near the hand washing facilities. Hand washing signs, in languages understood by the employees, shall be posted in toilet rooms and near hand washing facilities. Hand washing facilities, hand drying devices, and all related facilities shall be kept clean and in good repair.

(f) Toilet facilities, in toilet rooms separate for each sex, shall be provided in all places of employment in accordance with the following table. The number of facilities to be provided for each sex shall be based on the number of employees of that sex for whom the facilities are furnished. Where toilet rooms will be occupied by no more than one person at a time, can be locked from the inside, and contain at least one water closet, separate toilet rooms for each sex need not be provided. Where such single-occupancy rooms have more than one toilet facility, only one such facility in each toilet room shall be counted for the purposes of the table. The sewage disposal method shall not endanger the health of employees. Each water closet shall occupy a separate compartment with a door and walls or partitions between fixtures adequately high to assure privacy. Toilet room doors shall be tight fitting, self-closing, and not open directly into a processing area. Toilet rooms shall be kept clean and in good repair. A supply of toilet paper in a suitable holder shall be available in the toilet rooms. Air vents shall be screened or have self-closing louvers. A covered waste receptacle shall be provided in each toilet room.

NUMBER OF EMPLOYEES

MINIMUM NUMBER OF

WATER CLOSETS

1 to 15	1
16 to 35	2
36 to 55	3
56 to 80	4
81 to 110	5
111 to 150	6
over 150	1 additional fixture for each additional 40 employees

(g) No drainpipes or wastepipes shall be located over food processing or storage areas, or over areas in which containers are stored or washed.

(h) Sewage shall be discharged into an adequate sewerage system or shall be disposed of through other effective means. Where private sewerage systems are utilized, they shall be constructed and maintained according to state and local laws. Privies are not acceptable. The sewerage system shall be constructed and maintained in order that sewage will be inaccessible to flies or other insects, rodents, or other vermin, and the sewage shall not provide a source of contamination. All sewerage lines and floor drainage lines shall be separate and shall be trapped to prevent entrance of sewage into any portion of the plant.

§241.64. Poisonous or Toxic Materials.

(a) Only those poisonous or toxic materials necessary for plant operation shall be present in the plant. Containers of poisonous or toxic materials shall be prominently labeled according to law for easy identification of contents and safely stored. Such materials shall be used only in accordance with label directions.

(b) Poisonous or toxic materials not required for cleaning, sanitizing, and insect or vermin control shall not be present in the plant.

(c) Each of the following categories of poisonous or toxic substances shall be separated from each other:

- (1) pesticides; and
- (2) cleaning agents, such as de-

tergents and sanitizers, and chemicals, such as caustic acids or polishes.

(d) Poisonous or toxic substances shall not be stored above shellfish, food contact surfaces, utensils, or single service articles, except that this subsection does not prohibit conveniently located detergents or sanitizers in utensil or equipment cleaning areas.

(e) Poisonous or toxic materials shall not be used in a way that contaminates shellfish and food contact surfaces nor in a way that constitutes a hazard to employees.

§241.65. Construction of Shucking Benches and Tables.

(a) Shucking benches and contiguous walls shall be constructed of easily cleanable, corrosion resistant, impervious material, and shall be free from cracks.

(b) The tops of shucking benches and tables shall be located at an adequate height above the floor to prevent product contamination. Benches shall drain completely and rapidly, and drainage shall be directed away from any shellfish on the benches.

(c) Shucking blocks shall be easily cleanable, fabricated from safe material, of solid, one-piece construction, and, unless an integral part of the bench, shall be easily removed from the shucking bench.

(d) Stands or stalls and shucker's stools, including padding, shall be fabricated from impervious, corrosion resistant, safe materials and constructed so as to be easily cleaned and sanitized.

§241.66. Construction of Utensils and Equipment.

(a) All utensils and equipment shall be designed and fabricated from smooth, corrosion resistant, safe materials, durable under conditions of normal use, and resistant to denting, buckling, pitting, chipping, and crazing.

(b) There shall be no exposed screws, bolts, or rivet heads on food contact surfaces, and all joints on food contact surfaces shall be welded and have a smooth surface. If solder is used, it shall be composed of safe materials and be corrosion resistant.

(c) Blower tanks, tubs, and skimmers shall be so constructed that their top rims are at an adequate height above the floor to prevent product contamination.

(d) Blower tanks, skimmers, reusable in plant storage containers, shucking buckets, and pans shall conform to the *Shellfish Industry Equipment Construction Guides*, NSSP Part II, Appendix B. Equipment in use prior to January 1, 1989 having seams soldered with safe materials which are corrosion resistant, smooth, and easily cleanable may continue to be used by the processor using them on that date so long as the processor obtains certification each consecutive year at that location and the equipment remains in good repair.

(e) All utensils and equipment shall be subject to inspection for compliance by a representative of the DSSC prior to certification and shall be kept in good repair.

(f) All equipment, including external and internal blower airlines and hoses below a point two inches above the over-

flow level of the tank and blower drain valves, shall be constructed so as to be easily cleanable; perforations in skimmers shall be smooth to facilitate cleaning; and all internal angles in the food contact zone shall be filled or otherwise fabricated to facilitate cleaning. The use of wire or fiber mesh in the food contact zone of equipment is not acceptable, unless it is of approved material, is properly designed and constructed for such usage, and acceptable cleaning and sanitizing procedures are established. Surfaces which are not in the food contact zone shall be constructed so that they can be kept clean; seams and joints shall be welded or filled with food grade solder ground to a smooth surface; and there shall be no inaccessible spaces in which dirt or organic material might accumulate.

(g) Air pump intakes shall be located in a protected place. Air filters shall be installed on all blower air pump intakes. Oil bath type filters are prohibited.

§241.67. General Maintenance and Cleanliness.

(a) Building fixtures, doors, walls, ceilings, and floors shall be cleaned at a frequency necessary to maintain an adequate level of sanitation during operation and shall also be cleaned within two hours after each day, operations have ceased. Cleaning operations shall be conducted in such a manner as to minimize the danger of contamination of shellfish and food contact surfaces.

(b) Detergents, sanitizers, and other supplies employed in the cleaning and sanitizing procedures shall be safe and effective for their uses.

(c) Only material and equipment for routine use in the shellfish processing operation shall be stored in rooms used for shellstock storage, shucking, packing, re-packing, or container storage. The premises shall be clean and free of litter and rubbish.

(d) No animal shall be permitted in a shellfish processing plant or on the premises. Unauthorized persons shall be excluded from the plant.

(e) No food or drink consumption or preparation, use of tobacco in any form, spitting, or any other unsanitary act shall be permitted in the processing or storage areas of the plant.

§241.68. Cleaning and Sanitizing Equipment and Utensils.

(a) Adequate cleaning facilities, including three compartment sinks, brushes, detergents, sanitizers, hot water, and pressure hoses shall be available within the plant.

(b) Cleaning compounds and sanitizing agents shall be free from undesirable microorganisms and safe and adequate un-

der the conditions of use. Only chemical sanitizing agents at effective concentrations as specified in the NSSP Manual of Operations shall be used.

(c) Procedures shall be established which may employ machines or devices used for cleaning and sanitizing equipment and utensils that will routinely render equipment and utensils clean and provide adequate sanitizing treatment.

(d) Cleaning and sanitizing of food contact surfaces and equipment shall be required prior to commencing each day, operation. Cleaning and sanitizing operations shall be conducted in such a manner and at such a frequency as is necessary to prevent the contamination of shellfish and food contact surfaces. All floors, doors, walls, equipment, utensils, and work surfaces, including the external and internal blower airlines and blower drain valves shall be cleaned by scrubbing with water and detergent and rinsing with potable water within two hours after the day, operations have ceased. Windows and skylights shall also be kept clean.

(e) Food contact surfaces of utensils and equipment used in the plant shall be cleaned and sanitized following any interruption during which food contact surfaces may have become contaminated. The proper set up and use of a three compartment sink is necessary for proper washing and sanitizing. One end compartment of the three compartment sink shall be filled with hot water and cleanser or detergent and used for the cleansing of the utensils. The solution of water and cleanser or detergent shall be changed as frequently as necessary to assure thorough cleaning of all utensils. The middle compartment shall be kept free of standing water and used, first, for rinsing the residue from the utensils before cleansing, and second, for rinsing the wash water from the utensils after cleansing. The other end compartment shall be used for bactericidal treatment of utensils. Chlorine, when used as a sanitizer, is most effective in cool, not hot, water. The water temperature when using chlorine as a sanitizer shall be maintained warmer than 40 Fahrenheit. A free available chlorine level of 100 parts per million shall be maintained. A contact time of at least 15 seconds shall be used for sanitizing.

(f) Cleaned and sanitized portable equipment and utensils shall be stored in such a location and manner as to allow air drying, and product surfaces shall be protected from splash, dust, and other contamination.

§241.69. Sources of Shellfish.

(a) Shellstock shall originate from either a harvester licensed in accordance with TPWD rules or a certified dealer. Transportation agents or common carriers utilized by certified dealers do not have to be certified.

(b) Incoming shellstock shall be inspected to insure they are clean and wholesome, and shall be received at a temperature that conforms with §241.54 of this title (relating to Harvesting and Handling Shellstock).

(c) Shellstock shall be identified in accordance with §241.54 of this title (relating to Harvesting and Handling Shellstock), and shall be protected from contamination.

(d) Unwholesome, unidentified, or contaminated shellstock shall be destroyed.

§241.70. Shucking of Shellfish.

(a) Shellfish shall not be subjected to contamination while being held or processed.

(1) Shellstock to be shucked shall be stored an adequate height off the floor (minimum four inches) and in such locations that contamination from standing water or splash from foot traffic does not occur.

(2) Shellstock shall be reasonably free of mud when shucked.

(3) Only safe and wholesome shellfish shall be shucked.

(4) Shellfish with badly broken shells shall be discarded.

(b) Shellfish shall not be subjected to contamination or held for an excessive time at unsafe temperatures during shucking and packing.

(1) Shucking buckets and storage containers shall be so used that their rims are at an adequate height above the floor to prevent contamination from floor splash.

(2) Shellstock shall be refrigerated in compliance with §241.54 of this title (relating to Harvesting and Handling Shellstock). When shellstock is shucked, the meats shall be shucked and delivered to the packing room within the two hours specified as allowable at air temperatures above 45 Fahrenheit.

(3) Shucking buckets shall be completely emptied at the packing room and no overage shall be returned to the shucker. Overages shall be held in a sanitary container on ice in the packing room until they can be combined with other oysters of the same lot to be packed.

(4) Shucking containers shall be rinsed clean with running water and sanitized before each filling.

(5) The precautions that apply to hand shucking methods shall be applied to mechanical procedures for the shucking of all species of shellfish.

(c) The use of dip buckets for hand or knife rinsing shall be prohibited.

(d) Shellstock from different lots shall be kept separate, and shucking opera-

tions shall be scheduled to avoid commingling shellfish from different lots.

(e) Water used for fluming or washing shellstock and the shucked product shall be obtained from an approved source.

§241.71. Shell and Waste Disposal.

(a) Shells and other inedible materials shall be promptly and effectively removed from the shucking bench or table area to prevent interference with the sanitary operations of the shucking process.

(b) Shell and waste materials shall be disposed of so as to minimize the development of odor and not become an attractant, harborage, or breeding place for vermin. Fly control measures shall be necessary in the vicinity of shell disposal areas when flies are likely to be present.

(c) Shells and inedible waste shall be disposed of in such a manner that contamination of shellfish, food contact surfaces, ground surfaces, and water supplies does not occur.

§241.72. Single Service Containers.

(a) Containers for shucked shellfish shall be clean; constructed of non toxic metal, food grade plastic, glass, or other impervious material; and designed and fabricated such that the contents shall be protected from contamination during shipping and storage.

(b) Single service and single use containers and covers shall be kept in original cartons until used, and shall be kept clean and dry, or otherwise protected. Container storage rooms shall be kept clean and free of vermin; containers shall be stored in a manner that the presence of vermin may be easily detected. Container storage rooms shall not be used as general store rooms for unused equipment and materials. Containers shall be stored off the floor and away from the walls to facilitate inspecting and cleaning of the area.

(c) Shucked shellfish containers shall be cleaned, sanitized, and properly stored prior to filling, or they shall be discarded if they are unable to be cleaned adequately. Single service and single use containers which have been used and the shellfish removed, shall be destroyed or otherwise made unusable to hold shucked shellfish again.

(d) Plant employees shall use reasonable precautions to prevent food contact surfaces of containers from coming into contact with themselves or their clothing. Empty containers in the packing rooms shall be protected and kept inverted on stands or tables at adequate height above the floor to prevent contamination from splash.

§241.73. Packing of Shucked Shellfish.

(a) Skimmer tables and other packing equipment shall be located so they will not receive drainage from the delivery window or contamination from shucking room equipment and utensils.

(b) Shuckers and other unauthorized persons shall not enter the packing room for any purpose. An exception may be made in a small operation where an employee may adequately work in both the packing room and shucking room. In such cases, the employee shall put on a clean apron and shall wash his/her hands thoroughly, immediately upon entering the packing room.

(c) Shellfish meats shall be examined for naturally occurring extraneous materials such as shell fragments, sand, pearls, and other inedible components. The packing process and equipment shall not transmit contaminants or objectionable substances to the products. Containers shall conform to applicable food additive regulations and provide adequate protection from contamination.

(d) Shucked meats shall be thoroughly rinsed clean, drained, and packed promptly after delivery to the packing room. The packing operations shall be scheduled and conducted so as to chill all meats to an internal temperature of at least 45 Fahrenheit or less within two hours of packing. Containers of shucked shellfish shall be closed promptly after filling. Shucked meats which are to be packed into containers having a capacity of more than one gallon shall be chilled to 45 Fahrenheit or less prior to packing.

(e) Washing, blowing, and rinsing of shellfish meats shall be in compliance with time limits specified in the NSSP Manual of Operations.

(f) Shucked shellfish shall be packed only into containers correctly labeled with the authorized plant certification number. The presence of usable containers or covers with a certification number other than that on the unexpired plant certificate will be considered a violation of this subsection, except that filled, properly labeled containers of shellfish from another currently certified dealer may be present when records verify that the shellfish were purchased from that dealer already packed.

(g) Reusable containers shall be used only for in-plant storage of shucked shellfish and shall be sealed during storage. Reusable containers allowed by the DSSC shall be constructed of corrosion proof, impervious material with an exceptionally smooth interior making them easily cleanable. Covers of reusable containers shall be designed so as to protect the pouring lip of the container from contamination. These containers shall not be larger than five gallons in volume and no more than three gallons of shucked shellfish shall be stored in them at any one time. The shellfish shall be chilled to 45 Fahrenheit prior to being

put into these containers.

(h) Containers of shucked shellfish shall not be opened and the contents removed to smaller containers for sale by anyone not certified as a shucker/packer or a repacker.

§241.74. Labeling Shucked Shellfish.

(a) Each individual container of fresh or fresh frozen shucked shellfish shall have permanently recorded on the container or label, so as to be easily visible, the following information:

(1) the packer's or repacker's name as it appears on the certificate of compliance;

(2) the packer's or repacker's address, including at least the city and state; and

(3) the three digit certificate number preceded by the two letter state abbreviation and followed by the two letter abbreviation for the type of operation the dealer is qualified to perform (shucker/packer (SP) or repacker (RP)).

(b) The principal display panel on each container of fresh or fresh frozen shucked shellfish shall contain a date in compliance with the current NSSP Manual of Operations, Part II. If a code date is used, it shall consist of five numbers: the first digit being the last number of the year; the second two digits being the numerical sequence of the month; and the last two digits being the day of the month.

(c) If the date is a SELL BY date, the method of determining that date shall be based on the date the shellfish are shucked and shall be approved by the DSSC before being used. The proposed method must be submitted in writing to the DSSC.

(d) The principal display panel on each container of fresh or fresh frozen shucked shellfish shall contain a lot identification adequate to permit the container to be traced back to the incoming lot of shellstock from which it was packed.

(e) Frozen shellfish shall be labeled as FROZEN in print of equal prominence immediately adjacent to the name of the shellfish.

(f) Use of rubber stamps shall not be allowed except for dating. Waterproof adhesive labels shall not be used unless prior approval of the DSSC is obtained. The request must be submitted in writing.

(g) Reusable containers used to temporarily store shucked shellfish shall have the following information permanently recorded on the container:

(1) the packer's or repacker's name as it appears on the certificate of compliance;

(2) the packer's or repacker's address, including at least the city and state; and

(3) the complete certification number.

(h) Reusable containers must have a tag or label attached to each container indicating the date shucked so that the date on the final container can be determined properly at repacking. Other information necessary to properly identify the lot and source of the shucked product shall also be on the tag or label.

(i) All information, except the date and lot identification, shall be impressed, embossed, lithographed, or otherwise permanently recorded on the container by the container printing company. All labeling is subject to review and approval by the DSSC.

(j) All required information shall be provided in a legible and indelible form.

§241.75. Refrigeration and Shipping of Shucked Shellfish.

(a) Shucked shellfish shall be held and transported at air temperatures of 45 Fahrenheit or less. Storage and shipping of sealed containers of shucked shellfish in wet ice is required. Containers of shucked shellfish shall not be stored upside down.

(b) Containerized shellfish to be frozen shall be arranged to insure rapid freezing, and shall be frozen at an ambient air temperature of 0 Fahrenheit or less, with the shellfish frozen solid within 12 hours after the start of freezing. Frozen shellfish shall be handled in such a manner as to remain frozen solid, and shall be held at 0 Fahrenheit or less. Previously frozen shellfish which have thawed shall be destroyed.

(c) Refrigeration and frozen storage compartments shall be equipped in compliance with §241.54 of this title (relating to Harvesting and Handling Shellstock).

(d) All containers holding shucked shellfish shall be kept covered during refrigeration.

§241.76. Ice.

(a) Ice shall be manufactured at the establishment from potable water in a commercial machine which has been properly installed without any cross connections, or in another establishment approved by the appropriate regulatory agency.

(b) Ice shall be stored so as not to come into contact with unclean surfaces and shall be handled in such a manner that it will not be contaminated or exposed to contamination. Equipment used to handle ice shall be kept clean and shall be stored in a sanitary manner.

(c) Ice not manufactured in the shellfish processing establishment shall be inspected upon receipt and rejected if not delivered in clean conveyances and pro-

ected from contamination.

§241.77. Records.

(a) Complete, accurate, and legible records in a form approved by the DSSC shall be maintained by each certified dealer. These reports shall be sufficient to document that the shellfish are from an approved source and to permit a container of shellfish to be traced back to the specific incoming lot from which it was taken. Purchases and sales shall be recorded in a permanently bound ledger book. Transaction records indicating origin of the product shall be maintained in a legible, orderly file. If computer records are maintained, they shall be approved by the DSSC.

(b) Records covering purchases and sales of fresh shellfish shall be retained for a minimum of one year. Records covering purchases and sales of frozen shellfish shall be retained for at least two years or for a period of time that exceeds the shelf life of the product, if that period is longer than two years.

(c) Records shall be made available for inspection upon verbal request by a representative of the DSSC during all normal working hours.

§241.78. Employee Health.

(a) Persons infected by disease in a communicable form, or while a carrier of such disease, or while infected with boils, sores, infected wounds, or acute respiratory infection shall not work in a shellfish processing establishment in any capacity in which there is a likelihood of such persons contaminating shellfish or shellfish contact surfaces with pathogenic organisms or transmitting diseases to other persons.

(b) Daily observation of employees shall be made by the supervisor, with reasonable inquiries being made when signs of illness appear. Employees having diarrhea, sore throat, or any other symptoms of illness or disease shall promptly report this to their supervisor.

(c) Upon an inquiry indicating the possibility of a communicable disease, the infected employee shall be excluded from the plant pending clearance by a licensed medical doctor.

§241.79. Supervision.

(a) A reliable, competent individual shall be appointed by the management to supervise general plant operations as enumerated in the sections of this undesignated head. Appointing such an individual does not relieve management of the responsibility for complying with the sections of this undesignated head.

(b) There shall be evidence that supervisors have been monitoring employee hygiene practices, including proper hand

washing, no eating and no smoking at work stations, and properly storing personal items of clothing. Supervisors shall also insure that proper sanitary practices are implemented, including plant and equipment cleanup, protecting shellfish from contamination during shucking and packing, and rapid product handling.

(c) Unauthorized persons shall not be permitted in the processing areas during periods of operations.

§241.80. Personal Cleanliness.

(a) Employees handling shucked shellfish shall wear clean outer garments. These outer garments shall be rinsed or changed as necessary to be kept clean. Persons rinsing and packing shellfish shall wear an apron of approved material.

(b) Employees shall wash their hands thoroughly with soap and water and sanitize their hands in an adequate hand washing facility before starting work, after each absence from the work station, after each interruption, and at any other time when their hands may have become soiled or contaminated. Utensil sinks shall not be used for hand washing. There shall be at least one hand washing lavatory in the packing room and one in the shucking room.

(c) Finger cots, gloves, and shields, if worn by shuckers, shall be sanitized as often as necessary or at least twice daily; shall be properly stored until used; and shall be maintained in an intact, clean, and sanitary condition. Finger cots, gloves, and shields shall be made of an impermeable material except where use of such materials would be inappropriate or incompatible with the work involved.

(d) Hands of employees handling shucked shellfish shall be either protected by sanitized finger cots or gloves, or shall be washed and disinfected immediately before any manual handling of the shucked shellfish.

(e) Employees shall not store clothing or other personal belongings, eat food, chew gum, drink beverages, use tobacco in any form, spit, or conduct any other unsanitary acts in areas where shellfish are being stored, shucked, or packed or in areas that are being used for washing equipment or utensils.

(f) Employees handling shucked shellfish shall wear effective hair restraints, remove all insecure jewelry, and remove from hands any jewelry that cannot be adequately sanitized. If jewelry cannot be removed from hands, adequate finger cots or gloves shall be worn.

(g) Employees shall take other necessary precautions to prevent contamination of shucked shellfish with microorganisms or foreign substances, including, but not limited to, perspiration, hair, cosmetics,

chemicals, and medicants.

§241.81. Education and Training.

(a) Supervisors shall receive appropriate training in proper food handling techniques and food protection principles and shall be cognizant of personal hygiene and sanitary practices.

(b) Employees shall receive instruction and training in proper food handling and personal hygiene and sanitary practices from supervisory personnel or from other sources acceptable to the DSSC.

(c) Unsanitary practices of employees shall be brought to the attention of the employees by their supervisor and the employees shall be instructed on the proper sanitary practice that is to be used.

§241.82. Shellstock Shipping.

(a) Source, identification, and records.

(1) All incoming shellstock shall be inspected to assure compliance with requirements of §241.69 of this title (relating to Sources of Shellfish).

(2) Unwholesome, inadequately protected, or unidentified shellfish shall be destroyed.

(3) Complete, accurate, and legible records in a form approved by the DSSC shall be maintained by each certified dealer. These records shall be sufficient to document that the shellstock are from an approved source and to permit a container to be traced back to the harvest area, date of harvest, and the name of the harvester or harvest boat. Purchases and sales shall be recorded in a permanently bound ledger book and maintained for a minimum of one year. Transaction records indicating origin of the product shall be maintained in a legible, orderly file. If computer records are maintained, they shall be approved by the DSSC.

(b) Shellstock storage and shipping.

(1) Trucks used to store or transport shellstock shall be constructed, maintained, cleaned, and refrigerated in accordance with §241.54 of this title (relating to Harvesting and Handling Shellstock).

(2) Buildings in which shellstock are held shall comply with the construction requirements of the sections of this undesignated head. Shippers whose physical facilities consist of trucks and/or organized docking facilities only, shall have sanitary toilet facilities acceptable to the DSSC and an approved water supply providing at least warm water suitable for hand washing.

(3) Shellstock in storage shall be protected from contamination and maintained at temperatures necessary to minimize microbial growth pursuant to the

requirements of §241.54 of this title (relating to Harvesting and Handling Shellstock), and §241.75 of this title (relating to Refrigeration and Shipping of Shucked Shellfish).

(4) All equipment and conveyances which come into contact with shellstock shall be maintained and cleaned according to the requirements of §241.67 of this title (relating to General Maintenance and Cleanliness).

(5) Animals and unauthorized persons shall not be allowed in any area where shellstock is being stored or handled.

(6) Shellstock shall be identified in accordance with the requirements of §241.54 of this title (relating to Harvesting and Handling Shellstock), and records shall be maintained in accordance with the requirements of §241.77 of this title (relating to Records). Shippers whose physical facilities consist of trucks and/or organized docking facilities only, shall have a Texas business address at which records are maintained and inspections can be performed.

(c) Repacking and relabeling shellstock.

(1) Only clean and wholesome shellfish shall be repacked or relabeled.

(2) Shellstock repacking facilities shall be in compliance with the construction requirements established in the sections of this undesignated head.

(3) Shellstock from different lots shall not be commingled during repacking.

(4) Sacks, boxes, and other shellstock packing containers shall be clean and fabricated from safe materials.

(5) Animals or unauthorized persons shall not be allowed in any area where shellstock is being stored or repacked.

(6) A durable, waterproof tag or label shall be securely affixed to each container. The tag or label shall contain the following information in a legible and indelible form:

(A) date of harvest;

(B) the most precise description of the harvest area as is practicable;

(C) the name of the business as it appears on the certificate of compliance;

(D) the business address including at least the city and state;

(E) the certification number of the dealer performing the repacking or relabeling;

(F) the type of shellfish; and

(G) the name of harvester or harvest boat, or the source from which the shellstock was purchased.

(7) Records shall be maintained which will permit a container of shellstock to be traced back to the harvest area. Records shall also include the date of harvest and the name of the harvester or harvest boat, or the source from which the shellstock was purchased. Records shall be maintained for a period of at least one year.

§241.83. Repacking Shucked Shellfish.

(a) Facilities in which shucked shellfish are repacked shall be in compliance with construction requirements established in the sections of this undesignated head.

(b) Shucked shellfish for repacking shall originate only from certified shucker/packers, shall be labeled in compliance with §241.74 of this title (relating to Labeling Shucked Shellfish), and shall be received at internal temperatures of 45 Fahrenheit or less.

(c) Complete, accurate, and legible records, in a form approved by the DSSC, shall be maintained by the repacker. These records will permit a container of repacked shellfish to be traced back to the original shucker/packer. Purchases and sales shall be recorded in a permanently bound ledger book. If computer records are maintained, they shall be approved by the DSSC. Records shall be maintained for a minimum of one year for shucked shellfish and two years for frozen shellfish.

(d) Shucked unfrozen shellfish shall be maintained at an internal temperature of 45 Fahrenheit or less while in storage and throughout repacking operations.

(e) Only wholesome shellfish shall be repacked and the requirements of the sections of this undesignated head shall be followed to prevent contamination and to minimize microbial growth and product deterioration.

(f) Repacked shellfish shall be labeled in compliance with §241.74 of this title (relating to Labeling of Shucked Shellfish), and the original date of shucking shall be used in establishing the labeling date.

(g) Ice shall be manufactured and handled in accordance with the requirements of §241.76 of this title (relating to Ice).

(h) Employee health, supervision, and education and training shall be in compliance with the sections of this undesignated head.

(i) Shucked shellfish from different lots shall not be commingled during repacking.

(j) Animals and unauthorized persons shall not be allowed in any area where shucked shellfish are being stored or repacked.

§241.84. Heat Shock.

(a) Washing of shellstock.

(1) All shellstock subjected to the heat shock process shall be washed with potable water of adequate supply and pressure. Washing by immersion is prohibited. Unsafe or unwholesome shellfish, and shellfish with badly broken shells, shall be culled immediately prior to the heat shock operation.

(2) Shellstock shall be handled in a manner which prevents their contamination.

(b) Heat shock process.

(1) An approved scheduled process shall be used in each heat shock processing plant and the scheduled process shall be established by the DSSC or other qualified persons having adequate facilities for conducting appropriate studies to make such a determination.

(2) Critical factors which may affect the process shall be adequately studied and provided for in establishing the process. Critical factors to be considered include, but are not limited to:

(A) type and size of shellfish;

(B) time and temperature of exposure;

(C) type of process (e.g. hot water immersion, steam tunnel, steam retort) ;

(D) size of the tank, tunnel, or retort;

(E) water to shellfish ratios in tanks; and

(F) temperature and pressure recording devices.

(3) The physical and organoleptic properties of the species shall not be changed by the scheduled process and the shellfish shall remain alive until shucked.

(4) The process shall not result in increased microbial deterioration of the shucked shellfish.

(5) Records covering all aspects of the establishment of the process shall be maintained in the central file of the DSSC.

(6) The scheduled process shall be posted at a conspicuous location in the plant and all responsible persons shall be

familiar with the requirements.

(c) Cooling of heat shocked shellstock and shucked shellfish.

(1) All hot dipped shellstock shall be cooled with flowing potable water immediately after the heat shock process.

(2) All heat shocked shellstock shall be handled in such a manner as to preclude contamination during the cooling process.

(3) All shellfish meats of shellstock which have been subjected to the heat shock process shall be shucked and cooled to an internal temperature of at least 45 Fahrenheit within two hours after the heat shock process and shall be placed in storage at 45 Fahrenheit or below. This will require the use of crushed or flaked ice in the shucking containers, blowers, or chilling tanks, or the use of refrigerated water at the skimmer table.

(d) Cleaning of heat shock process equipment.

(1) Heat shock tanks or retorts, conveyers, tunnels, conveyances and all other equipment used in the heat shock process shall be thoroughly cleaned and sanitized in such a manner and at such a frequency as to minimize the danger of contamination of the shellfish in accordance with the sections of this undesignated head. When used on a continuous basis, such equipment shall be cleaned and sanitized on a predetermined schedule using adequate methods of cleaning. Tanks, conveyances, and equipment shall be thoroughly cleaned and sanitized at the end of each day's operation.

(2) If a heat shock water tank is used, it shall be completely drained and flushed at three hour intervals or less in such a manner that all mud and detritus remaining in the dip tank from previous dippings are eliminated.

(3) All heat shock process tanks or retorts, conveyers, tunnels, conveyances, and other equipment shall be of such construction that they may be easily cleaned, and shall be constructed and maintained in accordance with the sections of this undesignated head.

§241.85. Depuration Certificate Requirements.

(a) Any person who obtains approval for certification to operate a depuration plant shall furnish a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or make a cash deposit in the form of a cashier check, a certified check, or a postal money order prior to issuance of the certificate. The corporate surety, two personal sureties, or the cash deposit that is posted as bond shall be on the condition that the certificate holder will comply with the requirements in the sections of this

undesignated head pertaining to the gathering, depuration and sale of shellfish. Upon failure to comply with these requirements, the certificate may be revoked, and the certificate holder or his surety, corporate or personal, shall pay as forfeiture to the commissioner the sum of \$1,000.

(b) Failure to comply with any requirements concerning depuration established in the sections of this undesignated head, or the refusal to allow inspection of a depuration plant shall be considered to constitute an imminent hazard to public health. Such failure to comply shall constitute grounds for revocation of the depuration certificate prior to a hearing in accordance with the procedures established in §241.53 of this title (relating to Certification and Enforcement Procedures), and termination of all depuration operations. Shellfish in the plant at the time of a violation are subject to immediate removal and destruction. A new certificate may be issued when compliance with the sections of this undesignated head has been reestablished and a new bond has been posted as described in subsection (a) of this section. The facilities for which a certificate is issued are subject to inspection during normal business hours and at any time shellfish are being treated or stored on the premises.

(c) The depuration plant owner shall designate a plant supervisor and assistant plant supervisor to be accountable for compliance with all applicable state laws and rules. Supervisory personnel shall have a thorough knowledge of the process and shall be present during critical process operations.

(d) The depuration plant shall be used for no purpose other than the treatment of shellfish and research activities related thereto, unless approved by TDH. Persons not engaged in the operation of the shellfish depuration plant or not representing TDH, TPWD, or FDA shall not be allowed access to the depuration plant or the laboratory, unless approved by TDH.

(e) No depuration facility shall be built in conjunction with another certified shellfish dealership. Any person desiring to operate both a depuration facility and a dealership of any other category shall be required to hold a separate certificate for each. A certificate issued for the operation of a specific depuration facility is not applicable to the operation of any other depuration facility.

(f) All depuration activities shall be conducted in accordance with the NSSP Manual of Operations unless specified otherwise in the sections of this undesignated head.

§241.86. Depuration Gathering Permit.

(a) Any person, firm, or corporation engaging wholly or part-time in the business of gathering shellfish from areas

designated by the commissioner for delivery to a controlled depuration plant shall be required to hold a current permit issued specifically for this purpose by TPWD, with a copy in the files of TDH.

(b) Gathering for depuration permits shall be granted only to responsible individuals on the following conditions.

(1) All gathering and transporting of shellfish for depuration must be accomplished between sunrise and sunset.

(2) All boats and vehicles used to gather or transport shellfish for depuration shall be conspicuously marked in a manner established by TPWD. All boats or vehicles so marked shall be thoroughly cleaned and sanitized and the marking removed prior to use for harvesting or transporting treated shellfish or other shellfish approved for harvest or sale.

(3) Shellfish gathered for depuration shall not be sacked or containerized in any manner resembling normal sales of shellstock from approved harvest areas. Such sacks or other containers shall not be stored on any boat or vehicle used to gather or transport shellfish for depuration. Containers of untreated shellstock shall be tagged or labelled as POLLUTED.

(4) A copy of the TPWD permit shall be kept on board the vessel at all times during gathering and transporting of shellstock for depuration.

(5) All gathering and transporting of shellfish for depuration shall be conducted under the immediate surveillance of a commissioned officer of TPWD, or other commissioned officer as provided by law. The responsibility for obtaining this surveillance rests with the depuration plant owner or operator. A commissioned officer shall be present for every 10 gatherers or gathering boats or for any portion of 10 gatherers or boats working for any single depuration plant. An officer shall not concurrently serve as surveillance officer for more than one depuration plant. Separate surveillance officers shall be present for gatherers from the same plant working concurrently in more than one geographic area. The surveillance officer shall have all shellstock under his or her control at all times during transport from the gathering area to the depuration plant. The surveillance officer shall prepare a report stating the gathering area(s), species, and quantity of shellfish gathered each day by each gatherer under his or her surveillance. One copy of the report shall accompany the shellstock to the depuration plant and be maintained in the plant files for not less than one year. One copy of the report shall be forwarded to the Texas Department of Health, Division of Shellfish Sanitation Control, 1100 West 49th Street, Austin, Texas 78756.

(6) All shellfish gathered under authority of a depuration permit shall be delivered only to the depuration plant speci-

fied, on the day gathered, and shall be depurated or disposed of as waste.

(7) Shellfish gathered for depuration shall be protected at all times during gathering and transporting to prevent contamination and undue stress.

§241.87. Depuration Tank Design and Construction.

(a) Tanks shall be designed to allow for the uniform flow of water with no turbulence where shellfish are located. Design and operation of the tanks shall be such that all areas are subject to water flow and there shall be no areas of poor circulation. Tanks shall be of sufficient size to allow at least eight cubic feet of water per bushel of shellfish in each tank. If tanks are rectangular in shape, length to width ratios shall be from 2:1 to 4:1. The maximum depth of each tank shall be 48 inches. The flow rate in each tank shall be at least one gallon per minute per bushel and some means of measuring flow rate shall be provided.

(b) Tanks shall be designed so that scum and sludge (shellfish feces and pseudo-feces, sand, grit, etc.) can be easily removed or flushed out. The bottom shall be sloped longitudinally at least 1/2 inch per foot toward the outlet end.

(c) To facilitate proper cleaning and sanitation, as well as proper treatment of shellfish, tanks shall be constructed from impervious, nontoxic and inert materials. Coatings, when used, may include epoxy resins, powdered polyesters, vinyl bituminous water tank paint, and paraffin. The coatings are not only for waterproofing but should provide a smooth, hard, nonporous surface for cleanability.

§241.88. Depuration Plant Sanitation.

(a) The general sanitation requirements of the plant, physical structure, equipment and utensils, and the sanitary requirements for operations, processes, and personnel shall be as follows:

(1) the regulations issued by FDA, titled, "Human Food; Current Good Manufacturing Practice in Manufacture, Processing, Packing, or Molding," 21 Code of Federal Regulation, Part 128, as revised;

(2) where applicable, the sanitation requirements for plant, handling of shellstock, and personnel described in the current NSSP, Part II; and

(3) the requirements in the sections of this undesignated head.

(b) Equipment surfaces that come into direct contact with the shellfish shall be made of smooth, corrosion resistant, impervious, nontoxic materials which will not readily deteriorate or crack; shall be so constructed as to be readily cleaned; and shall be kept in good repair.

(c) The depuration plant shall be free from insects, rodents, or other vermin, and domestic animals.

(d) The treatment plant shall be kept clean and free of litter and rubbish. Miscellaneous and unused equipment and articles which are not necessary to plant operations shall not be stored in rooms used for depuration or shellfish storage. Culled shellfish shall be promptly removed from the plant and disposed of as waste. Any person entering a treatment tank shall wear sanitized footwear.

§241.89. Depuration Plumbing, Water Supply, and Related Facilities.

(a) Plumbing shall be installed as required in §241.63 of this title (relating to Plumbing, Sewage, and Related Facilities). Lavatories shall have running hot and cold water through a common mixer valve and shall be so located that their use by plant personnel can be readily observed by supervisory personnel. Signs shall be posted in toilet rooms and near lavatories, directing employees to wash their hands before starting work and after each interruption.

(b) Pump volutes and impellers shall be made of nontoxic material.

(c) The water supply for all uses shall be from a source approved by TDH. When sea water is used in the depuration process, it must be obtained from an area that is currently approved for that purpose by TDH. The water that is used for depuration purposes shall be sterilized before use and be properly disposed of at the conclusion of the treatment process.

(d) Plant domestic sewage shall be discharged into a sewage disposal system constructed in accordance with state and local requirements.

§241.90. Depuration Construction Requirements.

(a) Floors, walls, ceilings, screens and doors shall be constructed in conformance with §241.58 of this title (relating to Floors, Walls, and Ceilings), and §241.59 of this title (relating to Insect and Vermin Control Measures).

(b) Adequate natural and/or artificial light shall be provided in all working and storage rooms. To insure constant conditions for the shellfish undergoing the treatment process, it is desirable to maintain at least 10 foot candles of illumination at the water surface level of the depuration tanks throughout the day. These water surfaces should not be subjected to the variations of direct sunlight.

(c) Working room temperatures should be maintained within a reasonable comfort range. If control of depuration tank water temperature is dependent on room air temperature, room air temperature shall be controlled to promote optimum conditions

for the depuration process.

§241.91. Depuration Laboratory Procedures.

(a) All laboratory analysis shall be conducted in a local, county, or state government laboratory. The laboratory must be evaluated by a certified laboratory evaluation officer and meet the minimum requirements of TDH and FDA prior to issuance of the depuration certificate. The laboratory shall be supervised and operated by a person or persons having written approval for these purposes currently issued by TDH. It shall be the responsibility of the plant owner or operator to obtain the necessary laboratory support.

(b) The laboratory shall conduct routine bacterial examinations of process water and shellfish, and special examinations when necessary or required.

(c) Bacterial examinations of shellfish and water shall be made in accordance with the most recent edition of the American Public Health Association publication titled, *Recommended Procedures for The Examination of Sea Water and Shellfish*, or other methods approved by TDH.

(d) All other physical, chemical, or biological tests shall be conducted according to the most recent edition of the publication titled *Standard Methods for the Examination of Water and Waste Water*, prepared and published by the American Public Health Association, the American Water Works Association, and the Water Pollution Control Federation, or other methods approved by TDH.

§241.92. Depuration Plant Operation.

(a) Exclusion of infected persons. Any person infected with any disease in a communicable form, or known to be a carrier of any disease which can be transmitted through the handling of shellfish, or who has an infected wound or open lesion on any portion of his body, shall be excluded from the plant until appropriately treated and found by a licensed physician to be free from disease causing organisms.

(b) Source of shellfish. Shellfish shall be accepted for treatment at a shellfish depuration plant only from areas designated for this purpose, and only if they meet the raw product specifications established in the process verification study. A detailed description of all areas from which shellfish may be gathered for treatment purposes, updated as necessary, shall be filed by TDH with TPWD and the plant supervisor. The plant supervisor or assistant plant supervisor shall inspect all containers of raw shellfish upon arrival at the plant to verify that they contain the species and quantity stated on the surveillance officer's reports.

(c) Shellfish containers. Shellfish shall be accepted for treatment and released

after treatment in clean containers only. All containers and conveyances shall be constructed of nonabsorbent, nontoxic, and rustproof material, and kept clean and free from foreign matter. Burlap bags or similar absorbent material shall not be used for transporting shellfish to the treatment plant nor for the removal of shellfish from the plant.

(d) Culling. All untreated shellfish prior to, or upon arrival at the plant, shall be thoroughly inspected and culled by the plant supervisor or assistant plant supervisor. All dead shellfish, or shellfish in broken or cracked shells shall be disposed of as waste. The plant supervisor or assistant plant supervisor shall be held responsible for suitable culling that shall include the removal and disposal of dead shellfish or shellfish with broken or cracked shells both before and after depuration. The quantity of shellfish disposed of as waste shall be recorded and maintained as part of the plant records. Where needed to prevent cross contamination, separate culling facilities shall be provided for untreated and treated shellfish.

(e) Washing shellfish.

(1) Before treatment, all shellfish shall be thoroughly washed or hosed with water taken from a source approved by TDH. Immersion of shellfish for washing purposes is prohibited.

(2) After treatment, all shellfish shall be thoroughly washed or hosed with water taken from a source approved by TDH. Where needed to prevent cross contamination, separate washing facilities shall be provided for untreated and treated shellfish.

(f) Baskets used in the treatment process. All baskets used in the treatment process shall be of suitable size, designed for easy handling and cleaning, and made of impervious material

(g) Baskets shall be of such design as to allow water to flow freely over the shellfish in the treatment tank. Baskets shall not be filled beyond the level which will allow free circulation of water during the treatment process. The height of the shellfish in the baskets shall not exceed three inches. Baskets shall be stacked in such a manner as to allow free circulation of water and a minimum of three inches clearance in all directions. Containers used for treatment purposes shall not be used for any other purpose and no other equipment shall be placed in the treatment tank.

(h) Shellfish treatment. All shellfish, upon receipt at the treatment plant, shall be promptly treated or placed in controlled storage. Shellfish shall be treated for a minimum period of 48 hours or for such longer time as required by TDH.

(i) Washing treatment tanks. After each 24 hours that shellfish are in treatment tanks, the water in the tanks shall be

drained and the shellfish washed thoroughly with water from a supply approved by TDH. Shellfish shall be removed from the tank, and feces, pseudo-feces, and any other waste matter shall be flushed out of the tanks. Treatment tanks shall be sanitized with an approved sanitizing agent and thoroughly rinsed prior to the shellfish being returned to the tanks and the tanks being refilled with treatment water.

(j) Commingling prohibition. Different lots of shellstock for depuration shall not be commingled before or during treatment. Different species of shellfish shall not be depurated in the same depuration unit unless studies demonstrate the species are compatible. Different lots of treated shellstock shall not be commingled during packing.

§241.93. Depuration Shellfish Sampling Procedures.

(a) When shellfish are delivered to the depuration plant, the following schedule shall be followed.

(1) One or more shellfish samples (12 or more shellfish per sample) shall be collected for bacterial examination before the shellfish are submitted to the treatment process.

(2) Three or more shellfish samples (12 or more shellfish per sample), randomly selected from three or more locations in each tank, shall be collected for bacterial examination after 24 hours of depuration.

(3) Three or more shellfish samples (12 or more shellfish per sample), randomly selected from three or more locations in each tank, shall be collected for bacterial examination after completion of the treatment process.

(b) The schedule in subsection (a) of this section shall be followed until such time as TDH and the plant supervisor determine that the shellfish from designated areas are responding properly to the treatment process, and that the treatment process is successfully reducing bacterial levels. Commercial sale of treated shellfish shall not be allowed until the effectiveness of the treatment process has been established. After the treatment process has been determined to be effective, a routine sampling procedure shall be followed. A routine sampling procedure defining a program of daily sampling shall be established by TDH. Written permission from TDH must be obtained prior to the initiation of a routine sampling procedure.

(c) In the event of replacement or relocation of the laboratory, replacement of laboratory equipment, employment of additional or replacement laboratory personnel, changes in laboratory procedures, or the alteration of treatment procedures, a reevaluation shall be conducted by a certified laboratory evaluation officer, and TDH may require that initial depuration plant starting

procedures be used until such time as TDH and the plant supervisor determine that the laboratory and/or the treatment process results are acceptable. Written permission from TDH shall be obtained before routine sampling procedures are resumed.

§241.94. Depuration Process Water Control-Sampling.

(a) All shellfish treatment controlled processes shall have quality tests to determine if standards are being met and if controls are effective.

(b) To insure the continuing effectiveness of the shellfish treatment process, the following minimum sampling procedures shall be used.

(1) Incoming water shall be tested for temperature, turbidity, salinity, dissolved oxygen, bacteriological levels, and pH prior to the initiation of the 48 hour minimum treatment process, and after tanks have been drained and refilled following each 24 hours of treatment.

(2) Treatment tank water shall be tested for temperature, turbidity, salinity, dissolved oxygen, bacteriological levels, and pH once per day per tank.

§241.95. Depuration Treatment Water-Standards.

(a) Bacteriological. All water to be used in shellfish treatment tanks shall be subjected to either ultraviolet light treatment or treatment with ozone before use and at all times during treatments. The treated water shall be of bacterial quality equal to or better than the quality of water required in the department's Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems under Chapter 337 of this title (relating to Water Hygiene).

(b) Dissolved oxygen. The amount of dissolved oxygen in the water in the treatment tanks shall be at least five milligrams per liter and shall be measured daily at the discharge end of each tank. If aeration is required to maintain dissolved oxygen levels, it shall be accomplished in such a manner that deposited material in the tanks is not redistributed in the treatment water.

(c) Temperature. Treatment tank water temperatures shall be measured daily during the treatment process at the discharge end of the tanks. The temperature of water shall be maintained between 50 Fahrenheit and 77 Fahrenheit.

(d) Turbidity. Turbidity in the treatment process water shall not exceed 20

nephelometric turbidity units (N.T.U.s), or equivalent, and shall be measured daily at the tank inlet, unless an automatic device for sensing disinfecting light output and shutting down the pumping system when output is not adequate to disinfect the process water is an integral part of the system.

(e) Salinity. Salinity of the treatment process water may vary from a minimum of 10 parts per thousand to a maximum of 30 parts per thousand and shall be measured daily. The salinity should be within 20% of the salinity of the area from which the shellfish were gathered.

(f) pH. The pH of the treatment process water shall range from greater than or equal to 7.0 to less than or equal to 8.4 and shall be measured daily.

(g) Metallic ions and compounds. Levels of metallic ions and compounds shall not exceed levels found in approved shellfish harvesting areas and analyses shall be conducted, if required by TDH.

(h) Pesticides, detergents, and radionuclides. Levels of pesticides, detergents, and radionuclides shall not exceed levels found in approved shellfish harvesting waters and analyses shall be conducted, if required by TDH.

(i) Summary table. The following table summarizes the requirements of this section.

<u>Parameter</u>	<u>Minimum</u>	<u>Maximum</u>
Bacteriological		
(total coliform/100ml)	Less than 1.8	Less than 1.8
Dissolved Oxygen		
(milligrams/liter)	5.0	Saturation
Temperature	50°F.	77°F.
Turbidity		
(nephelometric turbidity units)	0	20 units
Salinity	10 ppt	30 ppt
pH	7.0	8.4
Metallic Ions Compounds	Not exceeding levels found in approved shellfish harvesting areas.	
Pesticides, Detergents and Radionuclides	Not exceeding levels found in approved shellfish harvesting areas.	

§241.96. Depuration Shellfish Meat Standards.

(a) Shellfish meats shall not be released for sale if the geometric mean or median fecal coliform MPN of the treated shellfish samples exceeds 20 per 100 grams of sample, or if any sample fecal coliform MPN exceeds 70 per 100 grams of sample.

(b) The use of the elevated temperature coliform plate count is authorized for the bacteriological evaluation of hard clams, *Mercenaria* spp. only.

(c) Should TDH suspect contamination of shellfish by metallic ions and compounds, pesticides, detergents, radionuclides, marine toxins, or any toxic substance or adulterate, TDH may require that the shellfish be analyzed for such contaminants before being released for sale.

§241.97. Depuration Ultraviolet (UV) Unit.

(a) Any UV unit which provides the required treatment and desired results may be used for the purification of water to be used in the treatment process. The unit shall be designed to deliver at peak load, at least one gallon per minute of treated water per bushel of shellfish and shall be easily cleanable.

(b) UV tubes shall be checked for intensity utilizing an approved commercial meter on a daily basis and shall be replaced when they reach a point of 50% efficiency or an age of 7,500 hours, whichever occurs first. A log of intensity shall be kept and an orderly numbering procedure for units and tubes established.

(c) UV tubes and reflectors shall be cleaned as often as necessary and at least daily.

(d) Signs stating "Ultraviolet Light Danger to Eyes—Do not look at Bulbs Without Eye Protection" shall be displayed in full view of personnel and authorized visitors. Skin protection, especially for the face and hands, shall be provided for personnel monitoring the bulbs.

(e) An automatic shutoff switch shall be provided to break the electric circuit, thus shutting off the current to the UV bulb when the lid of the UV unit is raised.

(f) A time recording device shall be installed in line with all UV units to record continuity of operation as well as bulb life.

(g) The complete treatment system, which includes all equipment surfaces that come into direct contact with treatment water or shellfish, shall be cleaned and sanitized in conformance with approved procedures as often as necessary and at the conclusion of each treatment period.

§241.98. Depuration Shellstock Storage.

(a) Refrigeration of shellstock.

Treated shellfish shall be placed under refrigeration immediately, and shall be stored at an air temperature not to exceed 45 Fahrenheit. Separate refrigerated storage facilities shall be provided for treated and untreated shellfish, and all treated shellfish shall be kept wholly separate from untreated shellfish. Said areas shall be under supervision of the plant supervisor or assistant plant supervisor, and adequate measures shall be taken to prevent the unauthorized removal of any shellfish. All shellfish shall be handled and stored under such sanitary conditions as will protect the quality of the product.

(b) **Controlled Storage.** Shellfish which are received at the treatment plant and which cannot be processed immediately shall be placed in controlled storage. It is important, in order to insure proper treatment following storage, that the temperature at which shellfish are held does not vary greatly from the temperature of the process water. Therefore, it is recommended that the storage for untreated shellfish include a controlled temperature of approximately the same level as the process water, if the shellfish are to be processed within 24 hours of gathering. To avoid bacterial multiplication or spoilage of the shellfish, the maximum storage air temperature shall be 70 Fahrenheit. If shellfish are stored for periods longer than 24 hours before treatment, then the controlled storage air temperatures shall be 50 Fahrenheit or less as required by the NSSP. A gradual change of temperature from the storage temperature to the treatment water temperature may then be necessary to ensure adequate, effective treatment.

§241.99. Tagging and Release of Depurated Shellfish.

(a) No shellfish shall be removed from the treatment plant until approved for release by the plant supervisor or assistant plant supervisor as provided in the sections of this undesignated head.

(b) All containers of treated shellfish, before being released from the shellfish treatment plant, shall be suitably tagged with a uniform tag or label bearing the following information:

- (1) the depuration processor's name and address, including at least the city and state;
- (2) the depuration processor's valid, complete certificate number issued by the DSSC;
- (3) the type of shellstock;
- (4) the date on which the shellfish were released from the depuration plant;
- (5) the term "Depurated" in letters as large as the largest other letters printed on the tag or label; and
- (6) the lot code of the treatment process batch.

§241.100. Depuration Records.

(a) Records containing the following information shall be available at the depuration plant at all times for shellfish presently undergoing the treatment process:

- (1) name and/or location of gathering area(s);
- (2) copy of permit(s);
- (3) date received;
- (4) quantity of shellfish received;
- (5) quantity of shellfish destroyed;
- (6) quantity of shellfish in tank(s); and
- (7) date and time of initiation of treatment.

(b) Records containing the following information shall be available at the depuration plant at all times for each lot of shellfish for which the treatment process has been completed for a period of one year from the date of treatment:

- (1) name and/or location of gathering area(s);
- (2) copy of permit(s);
- (3) date received in plant;
- (4) quantity of shellfish received;
- (5) quantity of shellfish destroyed;
- (6) date and time of initiation of treatment;
- (7) date and time of termination of treatment;
- (8) number of hours treated;
- (9) quantity of shellfish treated;
- (10) quantity of shellfish destroyed after treatment;
- (11) all laboratory results as specified;
- (12) date released from plant; and
- (13) quantity of shellfish released.

(c) The plant supervisor or assistant plant supervisor shall send to the Texas Department of Health, Division of Shellfish Sanitation Control, 1100 West 49th Street, Austin, Texas 78756, on a weekly basis, a copy of the daily records required under this regulation and the laboratory analysis results of all shellfish and water samples completed during each weekly period.

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

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

Proposed date of adoption: August 12, 1988

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

Chapter 301. Wastewater Surveillance and Technology

Administrative Requirements for On-site Sewerage Facilities

• 25 TAC §§301.101-301.109

The Texas Department of Health (TDH) proposes new §§301.101-301.109, concerning administrative requirements for on-site sewerage facilities. The sections cover purpose; definitions; general requirements for on-site sewerage facilities systems (OSSF); TDH regulation in areas without local regulation; delegation procedures/sections for local entities; review of existing orders; registration of on-site sewerage disposal system installers; emergency repairs; and penalties.

The new sections establish administrative requirements and procedures, and provide general information for on-site sewerage facilities. The sections also establish fees for facility permits and installer registration.

Stephen Seale, chief accountant II, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections as proposed. A local governmental entity, district, municipality, or river authority may be affected should it request authority for local regulation of on-site sewerage facilities; or be subjected to an authorized charge-back by the department for administrative costs incurred by the department above the amount of the permit fee. The estimated additional costs to local governmental entities will range from \$1,000 to \$100,000 per agency per year for fiscal years 1989-1993. The estimated additional costs to state government will range from \$100,000 to \$500,000 per year for fiscal years 1989-1993.

The cost of compliance with the sections for owners of on-site disposal facilities will be the permit fee and the employment of professional on-site sewerage facility designers when required. The costs for facility installers will be the fee for enrollment in required training courses approved by TDH and TDH registration. Projected costs for small and large businesses will be approximately the same per installation.

The cost of a TDH permit for an on-site sewerage facility is \$100 for conventional applications and \$250 for situations covered in the sections which require TDH approval of professional designs. TDH installer registration fees are: application fee \$50, renewal fee \$25, and re-examination fee \$25.

Stephen Seale also has determined that for each of the first five years the sections are in

effect the public benefits anticipated as a result of enforcing the sections as proposed are reduced potential for ground and surface water contamination, minimized exposure of citizens to the disease transmission potential of human and domestic waste and the abatement and prevention of health hazards by providing for consistent regulation and proper planning of the location, design, construction, installation, operation and maintenance of on-site sewerage disposal facilities. The costs to individuals will be as stated in the body of the sections.

Comments on the proposal may be submitted to Charles R. Maddox, P.E., Acting Director, Division of Water Hygiene, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7542. Public comments will be accepted for 30 days after publication of the proposal in the *Texas Register*. In addition, the department will to hold seven public hearings throughout the state during the 30 day comment period, as follows: at 1 p.m., on Thursday May 4, 1989, City Council Chambers, 317 West College, Grand Prairie; at 10:30 a.m., on Tuesday May 9, 1989, Rose Garden Building, 1725 West Front, Tyler; at 1 p.m., on Wednesday May 10, 1989, Bear Creek Park Community Center, 3 Abercrombie Drive, Houston; at 10:30 a.m., on Friday May 12, 1989, City Council Chambers, 2 Civic Center Plaza, El Paso; at 1 p.m., on Tuesday May 16, 1989, Central Library, 413 East Four Street, Amarillo, Texas; at 10:30 a.m., on Thursday May 18, 1989, Hoblitzelle Auditorium, Texas Agricultural Experiment Station, Texas A&M University, 2415 West Highway 83, Weslaco; and at 1:30 p.m., on Thursday May 25, 1989, in the auditorium of the Texas Department of Health, 1100 West 49th Street, Austin.

The new sections are proposed under Texas Civil Statutes, Article 4477-7e, §4(b)(1)-(4), which provides the Texas Board of Health with the authority to adopt rules governing the installation of on-site sewerage disposal systems; and Article 444b, §1.05, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§301.101. Purpose. It is the policy of the Texas Department of Health to assist the state's citizens in obtaining safe and adequate on-site sewerage disposal facilities (OSSF); to minimize the exposure of Texas citizens to the disease transmission potential of human and domestic waste; to minimize the contamination of drinking water supplies and hazards to the State's recreational areas; and to reduce the potential for ground and surface water pollution. It is also the public policy of this state to eliminate and prevent health hazards through the regulation and the proper planning of the location, design, construction, installation, operation, and maintenance of OSSF. It is under these policies and the authority given to the Texas Board of Health, by Texas Civil Statutes, Article 4477-7e, that these sections are promulgated and adopted.

§301.102. Definitions. The following words and terms, when used in this undesignated head, shall have the following

meanings, unless the context clearly indicates otherwise.

Article 4477-7e—Texas Civil Statutes, Article 4477-7e (House Bill 1875, 70th Texas Legislature, 1987).

Authorized agent—The local governmental entity authorized by the department to implement and enforce sections for OSSF.

Borehole—A drilled hole for the disposal of sewerage into the underground strata. This method is declared to be unsatisfactory.

Cesspool—A non-watertight covered receptacle intended for the receipt and partial treatment of domestic sewage. This device is constructed such that its sidewalls and bottom are open jointed to allow the gradual discharge of liquids while retaining the solids for decomposition in the absence of free oxygen (anaerobic).

Department—The Texas Department of Health (TDH), 1100 West 49th Street, Austin, Texas 78756.

Designated representative—A person or group that is designated by the department or authorized agent to make percolation tests, system designs, and inspections subject to the department's or authorized agents approval, and has successfully completed a prescribed educational training program provided by the department.

Individual—A person, group of persons, corporation, or entity permitted to own or use real estate.

Installer—A person that is compensated by another for the construction, installation, alteration, or repair of an on-site sewerage disposal facility.

Local governmental entity—A municipality, county, river authority, or special district including an underground water district or soil and water conservation district.

Nuisance—A nuisance is:

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between a person or persons; or

(B) an overflowing septic tank or similar device, including surface discharge from or groundwater contamination by a component of an on-site sewerage facility, or a blatant discharge from an on-site sewerage facility.

On-site sewerage facility (OSSF)—A single system or systems of treatment devices and disposal facilities that do not produce more than 5,000 gallons of waste per day, are used only for on-site disposal of that sewerage, and are not regulated by the Texas Water Commission.

Owner—A person or group which owns a building or property serviced by an OSSF.

Persc—An individual, partnership, corporation, organization, government or governmental subdivision or agency, busi-

ness trust, partnership, association, or any other legal entity.

Regional offices—A public health region office of the Texas Department of Health.

Sewage-Waste that is primarily organic and biodegradable or decomposable that generally originates as human, animal, or plant waste from certain activities including using toilet facilities, washing, laundering, bathing, and food preparation.

Sewage disposal plan—A technical report prepared by a registered professional engineer or registered professional sanitarian, either having demonstrated expertise in on-site sewerage disposal planning. The plan shall describe the circumstances involved with sewerage disposal on a land tract that has been, or is proposed to be, subdivided into lots of less than 10 acres.

Standards—The construction standards for on-site sewerage facilities which are described in Chapter 301 of this title (relating to Wastewater Surveillance and Technology).

§301.103. General Requirements for On-Site Sewerage Facilities (OSSF).

(a) Basic requirements for permitting. All aspects of the design, construction, installation, operation and maintenance of OSSF must be in accordance with the current Standards or other published criteria by authorized agents of the department which has received the department's approval. In the case of facilities proposed for construction in areas void of local regulation, the department will be the regulatory authority and the standards shall be the sole construction criteria for permit approval. Procedures for obtaining a permit shall include:

- (1) completion and submittal of an application provided by TDH or an authorized agent;
- (2) submittal of the appropriate fees;
- (3) receipt of application approval; and
- (4) satisfactory completion of on-site inspections by TDH or its authorized agent.

(b) Requirements for professionally designed facilities. Certain geological, topographical, and other circumstances discussed in the standards require the submission of planning materials by a registered professional engineer or registered professional sanitarian authorized to practice in the State of Texas. These individuals should be versed in the fundamentals of the design of on-site sewerage facilities. In areas where local regulation is in effect, the authorized agent is responsible for the design approval; however, the department will provide technical review assistance upon the authorized agents request.

(c) Situations requiring professionally designed facilities. The following situa-

tions shall require a professionally designed facility:

(1) proposals for disposal by innovative techniques not specifically covered by the standards;

(2) proposals for construction of an OSSF on a lot or tract of lesser acreage than that required by the standards;

(3) an OSSF proposed to serve mobile home or recreational vehicle parks or multi-unit residential developments such as apartments or condominiums, commercial or institutional establishments capable of generating flows in excess of 1,000 gallons per day; and

(4) any situation where a request for an exemption or variance to any part or parts of the standards is requested.

(d) Review of professional designs. The department is the reviewing agency for professional designs in areas which do not have local permitting. In those areas in which a municipality, county, district, river authority or other entity is an authorized agent of the department, such planning material must be submitted to and receive final approval from, such entity. The department may impose specific requirements of the authorized agent/designated representative regarding the review of professionally designed facilities. These requirements shall relate to factors such as educational background, experience, and training of personnel which facilitate a thorough evaluation of professionally submitted planning materials.

(e) Subdivisions and multi-residential facilities. Developers or designers of planning materials for OSSF for mobile home/recreational vehicle parks and other multi-unit residential developments must consider the method of sewage disposal at the time of determining the lot configuration. OSSF planning material for such facilities which are required to be submitted to TDH must be received at least 45 days prior to the proposed construction date. Such material shall include a notification from the property owner or the owners representative designating the responsible design individual. Required planning material for individual OSSF must be submitted at least 30 days prior to proposed construction and shall also be accompanied by such notification. The mentioned time (days) periods do not imply that TDH approval will be granted during or within those periods.

(f) Innovative systems for facilities. The department is the review authority for innovative designs, as defined in the standards, regardless of the existence of a local permitting authority. Authorized agents shall transmit planning material for innovative systems for the department's review and comments for all cases involving innovative designs. However, local authorized agents are responsible for the issuance or denial of a construction permit pursuant to

comments by the department. Subsequent similar designs for other properties may be reviewed by the local authorized agent should the original design proposal receive favorable review by the department.

§301.104. Texas Department of Health (TDH) Regulation in Areas Without Local Regulation.

(a) Permits, inspections, fees.

(1) Permits for construction of on-site disposal facilities issued by TDH are applicable only in localities which do not have an authorized agent. The application fee for a TDH permit for an OSSF is \$100 for an individual facility and \$250 for each facility which requires the submission of planning material by a registered professional engineer or registered professional sanitarian. The fee is payable upon application from the owner/agent to TDH for the permit. This fee may be submitted to the appropriate regional office. Money orders or certified checks only, payable to the Texas Department of Health, shall be accepted. No refunds of any amount shall be granted.

(2) A permit will provide the permittee one calendar year to begin construction. Should construction not begin during this period, the permit shall be rendered invalid and the application process, including fees, shall be reinitiated. Fees for reapplication shall be the same as current on the date of reapplication.

(3) Application for permits shall be made to the appropriate regional office. Upon acceptance of each application and fee remittance, the regional office shall issue a permit form which will consist of four copies. The original and one copy will be provided to the applicant who is responsible for posting a copy at the proposed construction site for use as a construction permit. The regional office will forward one copy of the permit and the remittance to the department for processing. Regional offices shall retain the final copy of the permit for future reference.

(4) Upon receipt of the application and remittance, the department shall coordinate such with planning materials, if required, and issue a permanent permit with a unique identification number.

(5) Article 4477-7e states that a permit is to be issued in the name of the person who owns the system, and the permit enables such person to construct, alter, repair, extend, or operate an OSSF. Permits are transferable between persons only upon application to and acceptance by the department from the new proposed occupant/owner. The fee to transfer a permit to the new owner shall be the same as for the original permit. An exception to this transfer fee will be considered in instances where for real estate speculation purposes a person has obtained permit(s) for construction of

an OSSF for residences or establishments which are built for the specific purpose of selling to another person.

(b) Resolution of nuisance complaints. The investigation of citizen complaints of nuisances created by the malfunctioning or improper installation or operation of an OSSF will remain a major activity for regional offices. To assure consistent administrative procedures in the resolution of such complaints, the following procedures will be followed:

(1) All complaints regarding an OSSF shall be investigated within a reasonable period after receipt. It is recommended that this period not exceed 21 days. Complaints received in the department shall be forwarded to the appropriate regional office (or authorized agent) within seven days of receipt.

(2) All validated complaints shall be resolved or substantial progress made toward resolution by the responsible individual within 30 days of official notification by a regional office. A reasonable extension, not to exceed an additional 15 days may be allowed under justifiable circumstances.

(3) To facilitate complaint processing, a department approved complaint form shall be used to record pertinent facts involved in an investigation. Each complaint received shall necessitate the completion of the form regardless of other communication which may be required in the complaints resolution.

(4) Each complaint shall be identified by code according to a 13 digit designation which identifies the region, county, year, and month, and the numerical order of complaint within each county. For example, Code Number 1- 018-901-001 shall identify a complaint as follows:

(A) 1 represents public health regional office 1 (PHR 1);

(B) 018 represents Bosque County;

(C) 901 represents January 1989; and

(D) 001 identifies the first complaint in Bosque County in January 1989.

§301.105. Delegation Procedures/Sections for Local Entities.

(a) General policy. It is department policy to promote regulation of OSSF by local governmental entities. Much of the responsibility for the promotion of this concept rests with the regional offices. Regional staff shall contact each county which does not have local regulation to promote

this concept. Those counties or other entities which have an on-site waste disposal order (OSWDO) authorized by the Texas Water Commission, prior to September 1, 1989, shall be designated authorized agents of the department, continuing to operate their programs pursuant to Texas Civil Statutes, Article 4477 7e requirements. Section 301.106 of this title (relating to Review of Existing Orders) discusses the review of these existing orders.

(b) Proposed on-site waste disposal orders (OSWDO).

(1) Local governmental entities which desire to become authorized agents of the department shall indicate such to the appropriate regional office. Upon the department's approval, an authorized agent will administer its own OSWDO, enforcing, at a minimum, the equivalent of the standards or other sections which may be adopted by the Texas Board of Health.

(2) The prescribed measures for obtaining authorized agent status will be included in a separate TDH document which shall include a model OSWDO for local entities. Any changes to the model requested for local conditions must be accomplished consistent with established TDH policies and without conflict with the current standards. The department shall be the sole and final authority in determining the acceptability of proposed deviances from the model order. A brief overview of the delegation procedure is as follows.

(A) The department shall provide model orders to local entities which do not have an OSWDO.

(B) The department shall consult with local authorities as to specific procedures and requirements to obtain authorized agent status.

(C) After the department's preliminary approval, the local entity shall post required notices, and hold public hearings as required.

(D) The entity shall submit a finalized order/application for the department's review.

(E) If the submittal is found acceptable, the department shall issue written approval of the order and officially designate the local entity as an authorized agent. If the submittal is not found acceptable, the department shall provide a clear explanation of the undesirable factors of the proposed order and suggest acceptable alternatives which would render the proposal acceptable. Any proposed change to specific requirements of the model order must be at least as stringent in nature as the corresponding requirement contained in the model order.

(3) Other areas of consideration in the evaluation of a local entity's proposal will be the adequacy of funding/program commitment, program enforcement plan, and adequate enforcement procedures in resolving nuisances created by OSSF. Funding should be available at a level consistent with anticipated growth and activity levels within the proposed jurisdiction.

§301.106. Review of Existing Orders.

(a) General. The department is required to review existing on-site waste disposal orders (OSWDO) for adequate performance and compliance with requirements established by Texas Civil Statutes, Article 4477-7e. In order to facilitate TDH's compliance to this requirement, this section establishes performance parameters.

(b) Processing of on-site sewerage facility applications.

(1) The local entity shall complete the processing of applications for new OSSF and improvements to existing OSSF within time frames established by Texas Civil Statutes, Article 4477-7e. The article does not establish a minimum period for processing applications. The department, however, establishes a maximum period of five working days for authorized agents to complete the processing of all applications which do not require the submittal of designed plans. Section 6 of the article, however, establishes the following schedules for inspections of proposed OSSF.

(A) The initial inspection shall be made not later than the second working day, not including holidays, after the date on which notification has been received that a particular installation is complete and ready for inspection.

(B) It is the responsibility of the applicant/installer to notify the authorized agent of the readiness for inspection at least five working days prior to the desired inspection date.

(C) This requirement thus allows the authorized agent seven working days to complete the initial inspection.

(2) To assure continuous compliance with the schedules established in paragraph (1) of the subsection, each local permitting authority shall maintain a monthly roster available to TDH indicating the total number of applications received monthly. This roster shall include information regarding the date of application, date of final processing, and the disposition of each application.

(c) Resolution of nuisance complaints.

(1) A major activity of any OSWDO administration is the satisfactory resolution of nuisance complaints involving

on-site sewerage disposal systems. In order to assure consistent administration of enforcement procedures by local entities, the department establishes the following criteria.

(A) All complaints regarding OSSF shall be investigated within 21 calendar days of receipt.

(B) All justifiable complaints shall be resolved by validated corrections or enforcement activities within 30 days after notification to the party responsible for the nuisance condition. Enforcement procedures must be written into the local OSWDO and, at a minimum, meet the requirements of Texas Civil Statutes, Article 4477-7e, §10 and §11.

(C) The local entity shall be responsible for providing the department with a monthly roster of complaints, including identity of complainant, date received, date investigated and the date and nature of resolutions. From this information the department shall maintain a file indicating the activities of each entity for review reference only. It is important to note that the identity of the complainant whether kept by state or local governmental agencies, shall be kept confidential.

(D) The department shall maintain a log of citizen complaints received regarding a local entity's performance. The department shall contact the appropriate local entity within 14 calendar days after the receipt of such complaint to ascertain such entity's activities regarding the particular situation in question.

(2) The frequency of the department's overall review of local OSWDO's is restricted by Texas Civil Statutes, Article 4477-7e to a maximum of once per year. In some instances, this period may be extended should evidence provided in the reports described in this section from local entities to the department indicate yearly review is not required. The department is further required to submit an annual report to the Texas Board of Health relating to the status of local governmental entity's regulatory program. To meet this requirement the initial review of existing local programs shall be initially scheduled according to the date of implementation of each entity's OSWDO.

(3) If the department's review determines that a local entity does not consistently enforce the department's minimum requirements for OSSF, the Department shall hold a hearing in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the department's formal hearing procedures in Chapter 1 of this title (relating to Board of Health) to determine whether the entity shall lose its designation

as an authorized agent of the department. In such cases, the department, at its discretion, shall designate another authorized agent for the locale in question, or the department may perform the inspection/permit operations in the disposed agents jurisdiction. In such instances, all fees, etc. shall be payable to the department. Additionally, the department shall invoke the provisions of Article 4477-7e, §8(c), which authorizes the department to assess a charge-back fee for administrative costs relating to the permitting function that are not covered by the permit fees collected. The maximum charge-back fee to the local entity shall not exceed the cost of the permit.

§301.107. Registration of On-Site Sewerage Disposal System Installers.

(a) General.

(1) Texas Civil Statutes, Article 4477-7e, acknowledges that on-site sewerage disposal systems when properly designed and installed in suitable soils can provide a safe and adequate method of sewerage disposal.

(2) The purpose of this section is to set forth a statewide uniform procedure for the training and registration of installers of on-site sewerage disposal systems.

(3) The intent of this section is to assist individuals employed or seeking employment in the on-site sewerage disposal system installation industry in meeting the educational and testing requirements for obtaining registration.

(4) The registration of properly trained installers of on-site sewerage disposal systems will help to protect the health and welfare of the citizens of this state from the disease potential of human and domestic wastes.

(5) Beginning 130 days after the effective date of this section, no person may install, construct, alter, or repair an on-site sewerage disposal system for compensation unless he/she is registered by the department or is expressly excepted from the installer's registration requirements.

(6) In addition to the requirements of this section, a registered installer shall comply with all state regulatory requirements relevant to the installation of on-site sewerage disposal systems and be responsible for proper installation of all on-site sewerage systems installed under his or her registration.

(7) Individuals who are employed with a state agency, local governmental entity or authorized agent as a designated representative having on-site sewerage disposal system regulatory responsibilities shall not be registered as installers.

(b) Administration. The department shall be responsible for the following:

(1) accepting and reviewing applications to determine if qualification requirements are met and notifying applicant as to action taken;

(2) preparing and administering examinations;

(3) scoring examinations and promptly notifying applicants as to results (pass or fail);

(4) issuing new and renewal certificates;

(5) publication and monthly updating of a roster of installers holding valid registration with copies available to any person upon request;

(6) maintaining training records of installers and designated representatives;

(7) approving training courses for registration purposes;

(8) maintaining transactions of advisory committee meetings; and

(9) collection of fees.

(c) Installer Advisory Committee.

(1) The committee shall consist of seven members, as follows:

(A) two persons who hold valid registration as installers;

(B) one administrator from a local governmental entity;

(C) one person trained as a designated representative;

(D) one person from the manufacturing or marketing industry;

(E) one person who represents the department; and

(F) one person who is a design consultant.

(2) The commissioner of health shall appoint the members giving consideration to geographic distribution.

(3) The term of committee membership shall be five years and no member shall serve more than two consecutive terms. Initial appointments will have staggered terms to insure experienced individuals are available at all times.

(4) The commissioner shall appoint the chair of the committee, and the committee shall select from among its members such other officers as needed.

(5) A quorum of the committee shall be a majority of its members.

(6) Committee members shall be eligible for reimbursement of travel expenses at the same rate of State employees.

Expenses must be approved by the department.

(7) The committee shall be responsible for the following:

(A) assisting the department in developing policies, regulations, and procedures needed to administer the registration program;

(B) advising and assisting as needed in reviewing and evaluating questionable applications;

(C) assisting the department in developing and evaluating registration examinations;

(D) advising the department on educational training programs; and

(E) promoting and encouraging the registration of installers of on-site sewerage disposal systems.

(d) Applications.

(1) Application for registration shall be made on a standard form provided by the department.

(2) Each application shall be accompanied by the appropriate fee as set out in subsection (k) of this section.

(3) The applicant shall furnish evidence of any training credit as described in subsection (i) of this section, when requested by the department.

(4) Any applicant shall meet the training requirements and submit the appropriate fee as required by this section before taking the examination.

(e) Examinations.

(1) An applicant shall take a written examination after presenting qualifications acceptable to the department. At the discretion of the department, an oral examination may be used to establish an applicant's qualification for registration.

(2) The passing score for the examination shall be 70%, however only a pass/fail notification will be issued by the department.

(3) Any applicant who fails an examination may repeat the examination after a period of 60 days following the date of the previous examination after paying the appropriate reexamination fee.

(4) Following the failure of an examination, the application shall be held by the department for a maximum of 12 months pending the applicant's repeating the examination. If the examination has not been repeated within 12 months from the date of the initial examination, the application will be discarded and the applicant shall submit another application with the

appropriate fee.

(5) Examinations shall be administered and supervised by the department or by any person designated by the department. Examinations shall be given at places and times established by the department.

(6) Examinations shall be graded by the department and results forwarded to the applicant no later than 30 days after the examination date.

(f) Qualifications.

(1) All applicants shall be required to successfully complete the educational training program provided by or for the department.

(2) Only training that has been approved by the department is acceptable for registration.

(3) All applicants shall be required to pass an examination covering the field of on-site sewerage disposal.

(g) Certificates.

(1) Issuance of certificates.

(A) Upon satisfactory fulfillment of the requirements provided in this section a suitable certificate shall be issued by the department.

(B) The installer shall inform the department of any change in address during the validity period of the certificate. All certificates expire on August 31 of each year.

(C) An installer registration certificate will be issued to individuals only and will not be transferable.

(D) The issuance of a certificate shall not be construed by any individual that the department is responsible for the performance of the certificate holder.

(2) Renewal of certificates.

(A) Renewal fees as set out in subsection (k) of this section are due annually on September 1.

(B) Renewal fees must be received no later than 30 days following the expiration date of the certificate.

(3) Renewal application procedure.

(A) At least 30 days prior to the expiration date of the certificate, the department shall mail to the registered installer a renewal application showing the expiration date and the fee to be paid.

(B) The department shall

mail the renewal application to the installer at the most recent address provided by the installer to the department.

(C) The installer shall return the renewal application with the appropriate fee to the department by October 1.

(D) Upon the applicant's satisfactory fulfillment of the requirements for renewal provided in this section, a suitable renewal certificate will be issued by the department.

(h) Revocation of certificates.

(1) The certificate of an installer shall be revoked if:

(A) the certificate was issued erroneously or the installer obtained the certificate through fraud, deceit, or through submission of incorrect data on his/her qualifications; or

(B) the installer practiced fraud and deceit, or failed to use reasonable care, judgement or application of his/her knowledge in the performance of his/her duties.

(2) When the department or its authorized agent has reason to believe that charges against a registered installer may be valid, the department or its authorized agent shall notify the installer by personal service or certified mail at his/her last known address:

(A) of the charges made against him/her;

(B) that the department intends to conduct an examination of the charges; and

(C) that the installer has an opportunity to refute and prove the charges invalid.

(3) After the department's examination of the charges and the installer's rebuttal, if the department still has reason to believe there is a cause for revocation, the department or its authorized agent shall initiate a hearing in accordance with the Administrative Procedure and Texas Register Act, Article 6252-13a, and the department's formal hearing procedures in Chapter 1 of this title (relating to Board of Health).

(4) Upon revocation of an installer's registration, a new certificate shall not be obtained until his/her application is approved by the Installer Advisory Committee described in subsection (c) of this section.

(i) Training.

(1) Training used to meet the requirements for obtaining or renewing in-

stallers' certificates shall be in on-site sewerage disposal system operations.

(2) Training credit shall be based upon attendance recorded by the department.

(3) An installer must successfully complete the educational training program provided by the department.

(j) Exception to installer registration requirements. A property owner shall not be subject to the training and registration requirements when constructing, altering, or repairing an on-site sewerage disposal system on his/her property. However, the authorized agent or the department must be contacted prior to construction of the system regarding any permitting requirements to insure compliance with the department's standards or such construction standards duly established by the authorized agent.

(k) Fees applicable to the registration program administered by the department.

(1) The fees shall be as follows:

(A) the application fee—\$50;

(B) the renewal fee—\$25;

(C) the re-examination fee—\$25.

(2) Certificates that have not been renewed within 30 days after the expiration date (September 1) with the appropriate fee will be considered invalid. A new certificate shall be obtained by submitting a new application with the appropriate fee and receiving a passing score on the examination.

(3) Fees shall be paid by personal check, cashier's check, or by money order. Cash cannot be accepted for payment of fees.

(4) An applicant shall pay all required fees before taking the examination or receiving a certificate.

(5) All registration, renewal, and re-examination fees shall be made payable to TDH-OSP (Texas Department of Health, On-Site Sewerage Program) and are not refundable.

(6) If the applicant does not submit the appropriate payment with the new or renewal application, the certificate shall not be issued.

(7) The application fee for registration shall not be prorated.

(l) Registration by local governmental entities (optional).

(1) A local governmental entity may adopt more stringent registration qualifications than those established by the department. Under those circumstances, a

local governmental entity desiring to conduct a registration program may do so after obtaining approval from the department.

(2) A local governmental entity gaining approval to conduct a registration program shall provide an updated roster of registered installers to the department on a monthly basis.

(3) A local governmental entity may establish registration fees which differ from those established by the department.

§301.108. Emergency Repairs. An emergency repair may be made to an on-site sewerage disposal system without obtaining a permit providing that such repair is made for the purpose of the abatement of an imminent health hazard and that such repair shall not constitute an enlargement or extension of the system of more than 25% of the existing treatment or disposal facilities.

§301.109. Penalties.

(a) A person commits an offense if the person fails to register as an installer with the department or an authorized agent.

(b) A person commits an offense if the person begins construction, alteration, repair, or extension of an on-site sewerage disposal system owned by another person before the owner of the system obtains a valid permit for construction, alteration, repair, or extension of the on-site sewerage disposal system in violation of Texas Civil Statutes, Article 4477-7e, §7.

(c) An offense under Texas Civil Statutes, Article 4477-7e is a misdemeanor punishable by a fine of not less than \$50 or more than \$100. If it is shown on the trial of the defendant that the defendant has previously been convicted of an offense under this article, he shall be punished by a fine of not less than \$125 nor more than \$500, by confinement in jail for not more than one month, or by both. Each day of a continuing violation is a separate offense.

(d) The department or an authorized agent may bring suit for injunction to prevent or restrain a violation of this section or Article 4477-7e.

(e) An emergency repair made to an on-site sewerage disposal system without a permit as provided by §301.108 of this title (relating to Administrative Requirements for On-Site Sewerage Facilities) is not an offense under this section.

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

Issued in Austin, Texas, on April 19, 1989.

TRD-8903569

Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: July 7, 1989.

For further information, please call: (512) 458-7542

Chapter 313. Athletic Trainers General Requirements and Guidelines

• 25 TAC §§313.1-313.13

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

The Advisory Board of Athletic Trainers, with approval of the Texas Board of Health, proposes the repeal of existing §§313.1-313.13, and proposes new §§313.1-313.17, concerning the regulations and licensure of athletic trainers. The repeal allows for the adoption of the new section. The new sections cover definitions; the board's operations, fees; application requirements and procedures; educational requirements; apprenticeship requirements; examination for licensure; determination of eligibility for licensure, temporary license, licensing, changes of name or address, license renewal, continuing education requirements, licensing of persons with criminal backgrounds to be athletic trainers; guidelines for conduct; violations, complaints, and disciplinary actions, and formal hearings.

The new sections reflect changes in the organization of the rules to assist licensees in understanding the rules. The changes include adding criteria for approval and disapproval of continuing education credits; adding a procedure for reissuance of license certificates and identification cards; amending the code of ethics to include objective standards of acceptable professional conduct to which licensees must adhere; adding a course of instruction in athletic training to the educational requirements for licensure; clarifying the apprenticeship guidelines for applicants apply under the Athletic Trainer's Act, §9(2) and (3), clarifying the eligibility for examination; and the clarifying procedures relating to disciplinary actions.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections.

The effect on state government will be an estimated increase in revenue of \$100 each year of fiscal years 1989-1993. There will be no fiscal implications to local government or small business.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that the licensing and regulation of athletic trainers continues to identify competent practitioners. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed will be \$10 for replacement of a lost or destroyed license certificate.

Comments on the proposal may be submitted

to Becky Berryhill, Program Administrator, Advisory Board of Athletic Trainers, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7546. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The repeals are proposed under Texas Civil Statutes, Article 4512d, §5, which provide the Advisory Board of Athletic Trainers, subject to final approval of the Texas Board of Health, with the authority to adopt rules consistent with the Athletic Trainers Act.

§313.1. Code of Ethics.

§313.2. Administrative Procedures.

§313.3. Policies of the Board.

§313.4. Application Processing.

§313.5. Testing.

§313.6. Application to Take Examination.

§313.7. Academic Requirements.

§313.8. Apprenticeship Requirements.

§313.9. Fee Schedule.

§313.10. License Renewal.

§313.11. Continuing Education

§313.12. Denial, Suspension, or Revocation.

§313.13. Licensing of Persons With Criminal Backgrounds to be Athletic Trainers.

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

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

TRD-8903513 Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services
Texas Department of
Health

Earliest possible date of adoption: August 12, 1989

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

◆ ◆ ◆
• 25 TAC §§313.1-313.17

The new sections are proposed under Texas Civil Statutes, Article 4512d, §5, which provide the Advisory Board of Athletic Trainers, subject to final approval of the Texas Board of Health with the authority to adopt rules consistent with the Athletic Trainers Act.

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

Act—Texas Civil Statutes, Article 4512d, relating to the Advisory Board of Athletic Trainers.

Administrator—The department employee designated as the coordinator of the licensure activities authorized by the Act.

APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Applicant—A person who applies to the board for a license or temporary license.

Athletic Trainer—A person licensed under the Act.

Board—The Advisory Board of Athletic Trainers.

Board of Health—The Texas Board of Health.

Department—The Texas Department of Health.

Executive secretary—A licensed athletic trainer employed by the board as the director of board licensing activities and who serves at the direction of the board.

Hearing examiner—An attorney duly designated and appointed by the board to conduct a formal hearing under this chapter.

Licensee—A person who holds a current license or a temporary license as an athletic trainer issued by the board under the Act.

NATA—The National Athletic Trainers, Association Inc. and its predecessor or successor organizations.

Temporary license—A license issued under §313.9 of this title (relating to Temporary License).

§313.2. The Board's Operation.

(a) Purpose. This section sets out the organization, administration, and general procedures and policies governing the operation of the board.

(b) Officers.

(1) The chairman shall preside at all board meetings at which he or she is in attendance and perform all duties prescribed by this chapter. The chairman may serve as an ex-officio member of any committee.

(2) The vice-chairman shall perform the duties of chairman in case of the absence of the chairman. In case the office of chairman becomes vacant, the vice-chairman will serve until a successor is elected.

(3) The secretary-treasurer shall perform duties as determined by the board or the chairman.

(c) Election.

(1) At the meeting held nearest to August 31 of each year, the board shall elect by a majority vote of those members present and voting, a chairman, vice-chairman, and secretary-treasurer. Nomina-

tions shall be from the floor.

(2) A vacancy which occurs in the offices of chairman, vice-chairman, and/or secretary-treasurer may be filled by a majority vote of those members present and voting at the next board meeting.

(d) Committees.

(1) The board or the chairman with the approval of the board may establish committees necessary to assist the board in carrying out its duties and responsibilities.

(2) The chairman may appoint the members of the board to serve on committees and may designate the committee chairman.

(3) The chairman may appoint non-board members to serve as committee members on a consultant or voluntary basis, subject to board approval.

(4) Committee chairmen shall make regular reports to the board by interim written reports and/or at regular meetings, as necessary.

(5) Committees shall meet when called by the chairman of the committee or when so directed by the board.

(6) The following standing committees shall be appointed by the newly elected chairman each year to serve a term of one year:

(A) the Administrative Services Committee; and

(B) the Continuing Education Committee.

(e) Meetings.

(1) The board shall hold at least two regular meetings during each year ending on August 31 at such date, place, and time as may be determined by the chairman.

(2) Special meetings may be called by the chairman at such times, dates, and places as become necessary for the transaction of board business.

(3) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(f) Quorum. A quorum of the board necessary to conduct official business is four members.

(g) Transaction of official business.

(1) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is in pursuance of specific instructions of the board.

(2) Board action shall require a majority vote of those members present and voting.

(3) *Roberts Rules of Order, Newly Revised* shall be the basis of parliamentary decisions except where otherwise provided by this chapter.

(h) **Policy against discrimination.** The board shall make decisions in the discharge of its statutory authority without discrimination based on any person's race, creed, sex, religion, national origin, age, physical condition, or economic status.

(i) **Attendance.**

(1) The policy of the board is that members shall attend regular and committee meetings.

(2) The board may report to the governor and the Texas Sunset Advisory Commission the attendance records of members.

(j) **Reimbursement of expenses.**

(1) A board member is entitled to receive the state per diem allowance as set by the legislature in the General Appropriations Act for transportation and related expenses incurred for each day the member engages in the business of the board.

(2) Payment to board members of per diem and transportation expenses shall be on official state travel vouchers which have been approved by the department.

(3) Attendance at conventions, meetings, and seminars must be clearly related to the performance of board duties and show a benefit to the state.

(k) **Agendas.**

(1) The administrator shall prepare and submit to each member of the board, prior to each meeting, an agenda which includes items requested by members, items required by law, unfinished business, and other matters of board business which have been approved for discussion by the chairman.

(2) The official agenda of a meeting shall be filed with the Secretary of State of the State of Texas in accordance with the Open Meetings Act, Texas Civil Statutes, Article 6252-17.

(l) **Minutes.**

(1) The drafts of the minutes of each meeting shall be forwarded to each board member for review and comments prior to approval by the board.

(2) After approval by the board, the minutes of any board meeting are official only when affixed with the original signature of the chairman.

(3) The official minutes of board meetings shall be kept in the office of the administrator and shall be available to any person desiring to examine them during regular office hours.

(m) **Official records.**

(1) All public records of the board shall be open for inspection during regular office hours unless such records contain information excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a; the Family Educational Rights and Privacy Act of 1974, 20 United States Code, §1232g; or other applicable law.

(2) A person desiring to examine public records shall be required to identify himself or herself and sign a statement listing the records requested and examined.

(3) Public records may not be taken from board offices; however, persons may obtain photocopies upon written request and by paying the cost per page set by the State Purchasing and General Services Commission. Payment shall be made prior to release of the records and may be made by personal check.

(n) **Roster.**

(1) The department shall keep a roster of the names of all athletic trainers.

(2) The roster shall include, but not be limited to, the name and preferred mailing address of each athletic trainer.

(3) The roster shall be open to public inspection and available for sale upon request.

§313.3. Fees.

(a) The schedule of fees of the board is as follows:

(1) examination fee—\$30;

(2) initial licensure fee—\$35;

(3) renewal fee—\$25;

(4) temporary license fee—\$12.50; and

(5) late renewal fee:

(A) \$40 when renewed on or within 90 days of expiration plus \$10 if license certificate must be reissued;

(B) \$55 when renewed later than 90 days, but less than one year after expiration plus \$10 if license certificate must be reissued; or

(C) \$80 when renewed at least one year but less than two years after expiration plus \$10 if license certificate must be reissued.

(b) All fees are nonrefundable.

(c) An applicant whose personal check for the examination fee is not honored by the financial institution may reinstate the application by remitting to the department a money order or cashier's check for the amount within 30 days of the date of the applicant's receipt of the department's notice. An application will be con-

sidered incomplete until the fee has been received and cleared through the appropriate financial institution.

(d) An approved applicant whose personal check for the temporary license or initial licensure fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the applicant's receipt of the department's notice. If proper payment is not received, the application shall be disapproved.

(e) A licensee whose personal check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the licensee's receipt of the department's notice. If proper payment is not received, the license shall not be renewed. If a renewal card has already been issued, it shall be ineffective.

§313.4. Application Requirements and Procedures.

(a) **Purpose.** The purpose of this section is to set out the application procedures for examination and licensure.

(b) **General.**

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(2) The board must receive all required application materials at least 60 days prior to the date the applicant wishes to take the examination.

(c) **Required application materials.**

(1) The application form shall contain:

(A) specific information regarding personal data, birth date, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and board rules;

(C) a statement that the applicant, if issued a license, shall return the license certificate and license identification card to the board upon the revocation or suspension of the license;

(D) a statement that the applicant understands that fees submitted in the licensure process are nonrefundable;

(E) a statement that the applicant understands that materials submitted in the licensure process become the property of the board and are not returnable; and

(F) the signature of the applicant which has been dated and notarized.

(2) The apprenticeship documentation form shall contain:

(A) the applicant's name;

(B) the name and address of the institution where the program was undertaken (a separate form for each one);

(C) the name and job title of the applicant's supervisor of each program;

(D) the inclusive dates of the program and the number of clock hours per academic year;

(E) the type of work performed;

(F) the credentials of the supervisor of each program; and

(G) the signed statement(s) of endorsement(s) from a person(s) who can formally attest to the applicant's successful completion of the apprenticeship as set out in §313.6 of this title (relating to Apprenticeship Requirements).

(3) Applicants must submit official transcript(s) of all relevant college work.

(4) Out-of-state applicants also must submit written verification from a prospective employer indicating that the applicant is being considered for employment as an athletic trainer in Texas. This subsection does not authorize an out-of-state applicant to act in violation of the Act, §8.

(5) Vitae, resumes, and other documentation of the applicant's credentials may be submitted.

(d) Graduating applicants. Applicants who have passed the examination and are not degreed will have 90 days from their graduation date to complete the licensing procedure. If the application process is not completed within 90 days of the graduation date, the applicant shall be required to file a new application and retake the examination successfully in order to qualify for licensure.

§313.5. Educational Requirements.

(a) Purpose. The purpose of this section is to set out the educational requirements for examination and licensure as an athletic trainer.

(b) Degrees. Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional

educational accrediting association as reported by the American Association of Collegiate Registrars and Admissions Officers. The degree must:

(1) meet the athletic trainer curriculum requirements of the college or university including the following:

(A) completion of a course of instruction in athletic training; and

(B) at least three semester hours from each of the following course areas:

(i) human anatomy;

(ii) health;

(iii) kinesiology; and

(iv) human physiology or physiology of exercise.

(2) be in physical therapy; or

(3) be in corrective therapy with at least a minor in physical education or health.

(c) Certification required. Applicants who hold a degree under subsection (b)(1) of this section must have a current standard first aid and adult cardiopulmonary resuscitation certificate.

(d) Training course required. Applicants who hold a degree or certificate in physical therapy or in corrective therapy with at least a minor in physical education or health must complete a basic athletic training course from an accredited college or university.

(e) General.

(1) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(2) The board shall accept no course which an applicant's transcript indicates was not completed with a passing grade for credit.

(3) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

§313.6. Apprenticeship Requirements.

(a) The purpose of this section is to set out the apprenticeship requirements to qualify for examination and licensure as an athletic trainer.

(b) Applicants for examination must satisfactorily complete an apprenticeship in athletic training approved by the board.

(1) The apprenticeship guide-

lines for applicants qualifying under the Act, §9(1) are as follows.

(A) The program shall be a minimum of three academic years (fall-spring) semester under the direct supervision of and on the same campus as an approved college or university's full time licensed athletic trainer, or in states without licensure, a NATA certified trainer. A total of 1800 clock hours are required.

(B) The apprenticeship shall be fulfilled while enrolled as a student at the college or university where the apprenticeship is being served.

(C) The apprenticeship must be a minimum of 600 clock hours per academic year in the training room and on the field under the direct supervision of the supervising athletic trainer or the NATA certified trainer. Hours in excess of 600 per year are not cumulative. Hours in the classroom do not count toward apprenticeship hours.

(2) The apprenticeship guidelines for applicants qualifying under the Act, §9(2) and (3) are as follows.

(A) The program shall be a minimum of 720 hours over a two-year period under the direct supervision of an athletic trainer or a NATA certified trainer. It must include a minimum of 360 hours per year. Hours in excess of 360 per year are not cumulative.

(B) A written apprenticeship plan must be submitted with the required application materials.

(i) The supervisor must include his address, license number, telephone number, and place of employment. The plan must include the institutions where the apprenticeship will be completed and a weekly work schedule.

(ii) The supervisor, on behalf of the apprentice, shall enter into a written agreement of affiliation with the appropriate college, university, or secondary school.

(C) Actual working hours shall include a minimum of 20 hours per week during each fall semester.

(D) The apprenticeship shall be completed in the training room and on the field of a college, university, or secondary school acceptable to the board. Hours in the classroom do not count toward apprenticeship hours.

(E) The Administrative Services Committee shall review and approve

or disapprove individual apprenticeship programs.

(F) Approval of each program shall be obtained prior to commencement of the program. Each program may commence upon receipt of notification from the department that the program has been approved by the Administrative Services Committee.

(3) Documentation of the apprenticeship program must be provided by completion of the proper forms prescribed by the board.

§313.7. Examination for Licensure.

(a) Purpose. This section on examination sets out provisions governing the administration, content, grading, and other procedures for examination for licensure.

(b) Frequency. The board shall offer examinations at least three times a year in April, July, and December.

(c) Form. The examination shall consist of written and oral questions and evaluations prescribed by the board.

(d) Applications for examination.

(1) An applicant must file an application in accordance with §313.4 of this title (relating to Application Requirements and Procedures). An applicant may make application for examination if he or she:

(A) is within 30 semester hours of graduation;

(B) has completed or is enrolled in the courses listed in §313.5(b)(1) of this title (relating to Education Requirements); and

(C) has completed at least five semesters or is enrolled in the fifth semester of his or her apprenticeship program.

(2) The Administrative Services Committee shall review and approve all applications prior to the examination. An applicant meeting the requirements of paragraph (1) of this subsection, or of §313.5 of this title (relating to Educational Requirements) and §313.6 of this title (relating to Apprenticeship Requirements) shall be approved to take the exam. The committee will notify the department of applicants eligible for examination.

(3) If an application is timely filed in accordance with §313.4(b)(2) of this title (relating to Application Requirements and Procedures), the board shall notify an applicant whose application has been approved at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination dead-

line.

(4) An examination registration form must be completed and returned to the board by the applicant with the required examination fee (unless otherwise instructed by the board) at least 15 days prior to the date of examination.

(e) Locations. Examinations will be held in locations to be announced by the board.

(f) Grading. Examinations shall be graded by the board or its designee.

(g) Results. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination.

(h) Failures. An applicant who fails the examination prescribed by the board may take the immediately subsequent examination after paying another examination fee.

(i) Withdrawal of application. Any applicant who fails to apply for and take the examination within a period of two years after an examination approval notice is mailed to him or her by the department may have such approval withdrawn by action of the board.

§313.8. Determination of Eligibility for Licensure.

(a) The board shall make the final determination on the eligibility of all applicants.

(b) The Administrative Services Committee shall review and approve or disapprove all applications received by the board.

(c) Notices of application approval, disapproval, or deficiency shall be in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(d) An application for licensure shall be disapproved if the person has:

(1) not completed the requirements in §313.5 of this title (relating to Educational Requirements);

(2) not completed the requirements in §313.6 of this title (relating to Apprenticeship Requirements);

(3) failed to pass the examination prescribed by the board as set out in §313.7 of this title (relating to Examination for Licensure);

(4) failed or refused to properly complete or submit any application form(s), endorsements, or fees, or deliberately presented false information on any form or document required by the board;

(5) violated or conspired to violate the Act or any provision of this chapter; or

(6) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §313.14 of this title (relating to Licensing of Persons with Criminal Backgrounds to be Athletic Trainers) or involves moral turpitude.

(e) If after review, on behalf of the board, the Administrative Services Committee determines that the application should not be approved, the executive secretary shall instruct the administrator to give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. Procedures to deny an application shall be in accordance with §313.16(e) of this title (relating to Violations, Complaints, and Disciplinary Actions).

(f) An applicant whose application has been disapproved may not reapply for examination or licensure for six months.

§313.9. Temporary License.

(a) A temporary license may be issued to an individual who meets the educational and apprenticeship requirements of this chapter, but who has not previously applied to take the examination.

(b) After receiving the completed application required by §313.4 of this title (relating to Application Requirements and Procedures) and the nonrefundable temporary license fee, the board shall issue a temporary license to an applicant meeting the requirements of this section. This license entitles an applicant to perform the activities of an athletic trainer until the results of the examination are released.

(c) A temporary license shall not be renewed.

(d) An applicant who failed any previous examination shall not be eligible for a temporary license.

§313.10. Licensing.

(a) Purpose. The purpose of this section is to set out the licensing procedures of the board.

(b) Issuance of licenses.

(1) The department will send each applicant whose application has been approved and who has passed the examination a licensure form to complete and return with the initial license fee in the form of a personal or certified check or money order.

(2) Upon receiving an applicant's licensure form and fee, the board shall issue the person a license certificate and a license identification card containing a license number.

(3) Any license certificate or identification card issued by the board remains the property of the board.

(c) Display of certificate.

(1) The license certificate must be displayed in an appropriate and public manner as follows:

(A) the license certificate shall be displayed in the primary office or place of employment of the licensee; or

(B) in the absence of a primary office or place of employment or when the licensee is employed in multiple locations, the licensee shall carry a current license identification card.

(2) Neither the licensee nor anyone else shall display a photocopy of a license certificate or carry a photocopy of a license identification card in lieu of the original document.

(3) Neither the licensee nor anyone else shall make any alteration on a license certificate or identification card issued by the board.

(4) A destroyed or lost license certificate may be replaced at the time of renewal of the license. Requests shall include a statement detailing the loss or destruction of the licensee's original license or license identification card or be accompanied by the damaged document.

§313.11. Changes of Name or Address.

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.

(b) The licensee shall notify the board of changes in name or preferred mailing address within 30 days of such change(s).

(c) Notification of changes shall be made in writing including the name, mailing address, and zip codes, and be mailed to the department.

(d) Before a replacement license certificate or identification card will be issued by the board, the licensee shall return any previously issued document(s).

§313.12. License Renewal.

(a) Purpose. The purpose of this section is to set out the rules governing license renewal.

(b) General.

(1) When issued, a license is valid for one year commencing on the date of issuance of the initial license.

(2) A licensee must renew the license annually.

(3) The renewal date of a license shall be the last day of the month in which the license was originally issued.

(4) Each licensee is responsible for renewing the license before the expiration date and shall not be excused from

paying additional fees or penalties. Failure to receive notification from the department prior to the expiration date of the license shall not excuse failure to file for timely renewal.

(5) The board shall not renew the license of a licensee who is in violation of the Act or this chapter.

(6) A licensee must have fulfilled any applicable continuing education requirements prescribed by the board in order to renew the license.

(c) License renewal procedures.

(1) At least 30 days prior to the expiration date of a person's license, the department shall send notice to the licensee at the address in the board's records of the expiration date of the license and the amount of the renewal fee due. The licensee must complete and return to the board with the required renewal fee. The return of the completed renewal form in accordance with the requirements of paragraph (3) of this subsection shall be considered confirmation of the receipt of renewal notification.

(2) The license renewal form for licensees shall require the provision of the preferred mailing address, primary employment address and telephone number, and misdemeanor or felony convictions.

(3) A licensee has renewed the license when the licensee has mailed the renewal form and the required renewal fee to the department prior to the expiration date of the license. The postmark date shall be considered the date of mailing.

(4) The board shall issue to a licensee who has met all requirements for renewal an identification card. One renewal identification card shall be affixed to, or displayed with the original certificate.

(d) Late renewal procedures.

(1) The department, by certified mail, shall inform a person who has not renewed a license after a period of more than 30 days after the expiration of the license of the amount of the fee required for renewal and the date the license expired.

(2) A person whose license has expired for not more than 90 days may renew the license by submitting to the department the license renewal form and the late renewal fee. The renewal is effective if it is mailed to the department not more than 90 days after the expiration date of the license. The postmark date shall be considered the date of mailing.

(3) A person whose license has been expired for more than 90 days but less than two years from the expiration date may renew the license by paying to the department the license renewal penalty fees. The person must submit with the required license renewal form a letter stating the reasons for the failure to make a timely

renewal.

(4) A person whose license has been expired two years or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the then current requirements and procedures for obtaining a license.

(e) Expiration of license.

(1) A person whose license has expired may not hold himself or herself out as an athletic trainer; imply that he or she has the title of licensed athletic trainer or athletic trainer or use LAT or AT, or use any facsimile of those titles in any manner.

(2) A person whose license has expired may not perform the activities of an athletic trainer.

(3) A person who fails to renew a license is required to surrender the license certificate and identification card to the board after two years from expiration of the license or upon demand.

§313.13. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements which an athletic trainer must complete periodically to maintain licensure. These requirements are intended to maintain and improve the quality of professional services provided in an athletic training program; to keep the licensee knowledgeable of current research, techniques, and practice; and to provide other resources which will improve the skill and competence of the trainer.

(b) Requirements.

(1) Continuing education requirements for license renewal shall be fulfilled during three-year periods beginning on the first day following the issuance month and ending on the last day of each licensee's renewal month, except that the initial period shall begin with the date the board issues the license certificate and end on the last day of the third renewal cycle.

(2) At the time the initial license is mailed, each licensee shall be notified of the beginning and ending dates of the licensee's continuing education period and shall be provided forms in accordance with subsection (g) of this section.

(c) Hour requirements for continuing education. A licensee must complete 24 clock hours of continuing education during each three-year period described in subsection (b) of this section.

(1) A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(2) Approval of the Continuing Education Committee must be obtained for

each continuing education experience as described in subsection (g) of this section.

(d) Types of acceptable continuing education. Continuing education undertaken by a licensee for license renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses related to sports medicine;

(2) clinical courses related to sports medicine; or

(3) in-service educational programs, training programs, institutes, seminars, workshops, and conferences in sports medicine and/or athletic training.

(e) Criteria for continuing education approval. Requests for approval of continuing education experience should address the following criteria:

(1) relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(2) objectives of specific information and/or skill to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of programs; including the name of the sponsoring individual(s) or organization(s), and program leaders/faculty if different from sponsors, and contact person.

(f) Determination of clock hour credits. Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (d)(2) and (d) (3) of this section shall be credited on a one-for-one basis with one clock hour credit for each clock hour spent in the continuing education experience.

(3) Completion of a cardiopulmonary resuscitation (CPR) techniques course will be credited a maximum of six clock hours.

(g) Reporting of continuing education. Each licensee shall complete and file with the department an official continuing education report form for each continuing education experience for which credit is claimed.

(1) A licensee shall submit the required report to the department within 30 days following completion of the continu-

ing education experience.

(2) Each report filed by a licensee shall be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) a receipt showing the participant's name, course title, and date; and

(B) a program, brochure, or agenda.

(3) Sponsors may initiate their own requests and may, when approval is obtained in advance, announce such approval in connection with the continuing education experience.

(h) Activities unacceptable as continuing education. The Continuing Education Committee may not grant continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing education activity completed before or after the period of time described in subsection (b)(1) of this section for which the continuing education credit is submitted except as in accordance with subsection (i)(1) of this section;

(4) self-study continuing education programs or activities;

(5) activities described in subsection (f)(1) of this section which have been completed more than once during the continuing education period; or

(6) performance of duties that are routine job duties and/or requirements.

(i) Failure to complete the required continuing education.

(1) A licensee who has failed to complete the requirements for continuing education may be granted a maximum of a 90-day extension to the continuing education period by the Continuing Education Committee.

(2) A subsequent continuing education period shall end three years from the date the previous continuing education period expired, not the date of the end of the extension period. Credit earned during the extension period may only be applied to the previous continuing education period.

(3) A person who fails to complete continuing education requirements for license renewal may not practice but may be reinstated upon completion of the required continuing education within the given extension period and payment of applicable late renewal fee or license renewal

penalty fee.

(j) Elderly licensees. Any licensee attaining the age of 62 years shall have the continuing education requirement waived.

§313.14. Licensing of Persons with Criminal Backgrounds to be Athletic Trainers.

(a) Purpose. This section sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licensure as an athletic trainer.

(b) Criminal convictions which directly relate to the occupation of athletic trainer.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of an athletic trainer.

(2) In considering whether a criminal conviction directly relates to the occupation of an athletic trainer, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to be an athletic trainer;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an athletic trainer. In determining the present fitness of a person, the board shall consider the evidence described in Texas Civil Statutes, Article 6252-13c, §4(c).

(c) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

(1) The executive secretary shall give written notice to the person that the board proposes to deny the application or suspend or revoke the license after a hearing in accordance with the provisions of §313.17 of this title (relating to Formal Hearings).

(2) If the board denies, suspends, or revokes an application or license under this section, the executive secretary shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the board and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(D) of the earliest date that the person may appeal.

§313.15. Guidelines for Conduct.

(a) Purpose. This section on the profession of athletic training shall constitute guidelines for the conduct of licensees.

(b) General. An athletic trainer shall work under the advice and consent of a licensed physician when carrying out the practice of prevention, evaluation, emergency care, physical reconditioning, and/or rehabilitation of injuries incurred by athletes.

(c) Professional representation and responsibilities.

(1) A licensee shall not misrepresent any professional qualifications or credentials.

(2) A licensee shall not make any false or misleading claims about the efficacy of any athletic training care.

(3) A licensee shall not promote or endorse products in a manner that is false or misleading.

(4) A licensee shall maintain knowledge and skills required for continuing professional competence.

(5) A licensee shall not abuse alcohol or drugs in any manner which detrimentally affects the provision of athletic training care.

(6) A licensee shall comply with the provisions of the Texas Controlled Substances Act, Texas Civil Statutes, Article 4476-15, and the Texas Dangerous Drug Act, Texas Civil Statutes, Article 4476-14, and any rules of the Board of Health or the Texas State Board of Pharmacy implementing those statutes.

(7) A licensee shall have the responsibility of reporting alleged misrepresentations or violations of board rules to the department.

(8) A licensee shall not make any false, misleading, or deceptive claims in any advertisement, announcement, or competitive bid.

(9) A licensee shall conform to generally accepted principles and standards of practice which are those generally recognized by the profession as appropriate for

the situation presented, including those promulgated or interpreted by other professional or governmental bodies.

(d) Professional relationships with clients.

(1) A licensee shall not receive or give a commission or rebate or any other form of remuneration for the referral of athletes for professional services.

(2) A licensee shall disclose to athletes any interest in commercial enterprises which the licensee promotes to athletes for the purpose of personal gain or profit.

(3) A licensee shall take reasonable action to inform the team physician in cases where an athlete's physical status indicates a change in medical status.

(4) A licensee shall provide athletic training services without discrimination based on race, creed, sex, religion, national origin, or age.

(5) A licensee shall not violate any provision of any federal or state statute relating to confidentiality of athlete communications and/or records.

§313.16. Violations, Complaints, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out:

(1) violations and prohibited actions under the Act and this chapter;

(2) procedures concerning complaints alleging violations of the Act or this chapter; and

(3) board actions against a person or licensee when violations have occurred.

(b) Types of violations and prohibited actions.

(1) A person may not hold himself or herself out as an athletic trainer or perform any of the duties of an athletic trainer as defined in the Act unless the person holds an appropriate license issued under the Act.

(2) A person may not hold himself or herself out as an athletic trainer by implying that he or she has the title of licensed athletic trainer or athletic trainer or using the letter LAT or AT or any facsimile of those titles in any manner unless the person holds an appropriate license issued under the Act.

(3) A licensee may not violate any provision of the Act or this chapter.

(c) Filing of complaints.

(1) Any person may complain to the board alleging that a person has violated the Act or this chapter.

(2) A person wishing to file a complaint against a licensee or other person

shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the administrator's office. The mailing address is Advisory Board of Athletic Trainers, 1100 West 49th Street Austin, Texas 78756-3183, (telephone: (512) 458-7546).

(3) Upon receipt of a complaint, the administrator shall send to the complainant an acknowledgment letter and the board's complaint form, which the complainant must complete and return to the administrator before further action can be taken. If the complaint is made by a visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(4) Anonymous complaints shall be investigated by the department provided that the complainant provides sufficient information.

(d) Investigation of complaints.

(1) The administrator is responsible for handling complaints.

(2) The department shall make the initial investigation and report the findings to the executive secretary.

(3) If the executive secretary determines that the complaint does not come within the board's jurisdiction, the executive secretary shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(4) The executive secretary, on behalf of the board, shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(5) The executive secretary may recommend that the license be revoked, suspended, or denied or that other appropriate action as authorized by law be taken.

(6) If the executive secretary determines that there are insufficient grounds to support the complaint, the executive secretary shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(e) Board actions.

(1) The board may deny an application or license renewal or suspend or revoke the license of any individual for any violation of the Act or this chapter.

(2) Prior to institution of formal proceedings to revoke or suspend a license, the board shall give written notice to the licensee by certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension, and the licensee shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this

chapter.

(3) If denial, revocation or suspension of a license is proposed, the board shall give written notice by certified mail, return receipt requested, that the licensee must request, in writing, a formal hearing within 30 days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

§313.17. Formal Hearings.

(a) The board may appoint a hearing examiner to conduct a formal hearing and to recommend final action to the board based on the evidence presented at the formal hearing. The board is not required to adopt the recommendations of the hearing examiner and may deny, suspend or revoke a license as it deems appropriate and lawful.

(b) A hearing shall be conducted in accordance with APTRA; this section; and §§1.21-1.34 of this title (relating to Formal Hearing Procedures) with the following exceptions:

(1) all final orders or decisions will be made by the board; and

(2) all references in the Formal Hearing Procedures to Agency, Board, or Commissioner shall mean the Advisory Board of Athletic Trainers.

(c) Copies of the Formal Hearing Procedures are indexed and filed in the administrator's office, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

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

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

TRD-8903514

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

Proposed date of adoption: August 12, 1989

For further information, please call: (512) 458-7546

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter B. Interagency Agreements

- 25 TAC §§401.48, 401.50, 401.51, 401.52

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §401.48, concerning memorandum of understanding continuity of care for inmates with a history of substance abuse; new §401.50, concerning memorandum of understanding coordination of delivery of mental health and mental retardation services to hearing-impaired or deaf persons; new §401.51, concerning memorandum of understanding coordination of information, services, and resources for youth; and new §401.52, concerning memorandum of understanding coordination of exchange and distribution of public awareness information.

Now §401.48 is proposed pursuant to Senate Bill 245 of the 70th Texas Legislature, which required TDMHMR, the Texas Department of Corrections, the Board of Pardons and Paroles, and the Texas Commission on Alcohol and Drug Abuse to adopt by rule a memorandum of understanding which establishes methods for identifying inmates with a history of substance abuse, coordinating services to enable inmates to successfully reenter the community on release, and sharing information about inmates necessary to provide continuity of care.

New §401.50 is proposed pursuant to House Bill 550 of the 70th Legislature, which required TDMHMR and the Texas Commission for the Deaf to adopt by rule a memorandum of understanding which describes the coordination of delivery of mental health and mental retardation services to persons who are hearing-impaired or deaf and which identifies means for the reduction of duplication of services.

New 401.51 is proposed pursuant to Senate Bill 33 of the 70th Texas Legislature, which requires TDMHMR and the Texas Youth Commission to adopt by rule a Memorandum of understanding concerning the coordination of information, services, and resources for youth.

New §401.52 is proposed pursuant to Senate Bill 298 of the 70th Texas Legislature, which requires TDMHMR, the Texas Rehabilitation Commission, the Texas Department of Human Services, and the Texas Department of Health to adopt by rule a memorandum of understanding to coordinate the exchange and distribution of public awareness information among the agencies.

Sue Dillard, director, office of standards and quality assurance, has determined that there will be no fiscal cost to state or local government or small businesses as a result of administering the sections as proposed, although the sections may require the reallocation of existing staff resources.

Ms. Dillard also has determined that the public benefit is the provision of public notice concerning interagency agreements affecting services to Texas citizens. There is no anticipated economic cost to individuals required to comply with the sections as proposed.

Comments on the proposal may be submitted to Linda Logan, Rules Coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under Texas Civil Statutes, Article 6547-202, §2.11, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

§401.48. Memorandum of Understanding: Continuity of Care for Inmates with a History of Substance Abuse.

(a) TDMHMR adopts by reference as Exhibit B a joint memorandum of understanding with the Texas Department of Corrections, the Board of Pardons and Paroles, and the Texas Commission on Alcohol and Drug Abuse concerning the provision of continuity of care for inmates with a history of substance abuse.

(b) Copies of this memorandum of understanding are filed in the Office of Standards and Quality Assurance, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§401.50. Memorandum of Understanding: Coordination of Delivery of Mental Health and Mental Retardation Services to Hearing-Impaired or Deaf Persons.

(a) TDMHMR adopts by reference as Exhibit G a joint memorandum of understanding with the Texas Commission for the Deaf concerning the coordination of the delivery of mental health and mental retardation services to hearing-impaired or deaf persons.

(b) Copies of this memorandum of understanding are filed in the Office of Standards and Quality Assurance, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§401.51. Memorandum of Understanding: Coordination of Information, Services, and Resources for Youth.

(a) TDMHMR adopts by reference as Exhibit H a joint memorandum of understanding with the Texas Youth Commission concerning the coordination of information, services, and resources for youth.

(b) Copies of this memorandum of understanding are filed in the Office of Standards and Quality Assurance, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

§401.52. Memorandum of Understanding: Coordination of Exchange and Distribution of Public Awareness Information.

(a) TDMHMR adopts by reference as Exhibit I a joint memorandum of understanding with the Texas Rehabilitation Commission, the Texas Department of Human Services, and the Texas Department of Health concerning the coordination of the exchange and distribution of public awareness information among agencies.

(b) Copies of this memorandum of understanding are filed in the Office of Standards and Quality Assurance, TDMHMR, 909 West 45th Street, Austin, Texas 78756, and may be reviewed during regular business hours.

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

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

TRD-8903473 Pattilou Dawkins
 Chairman
 Texas Board of Mental
 Health and Mental
 Retardation

Earliest possible date of adoption: May 26, 1989

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

◆ ◆ ◆
Chapter 404. Protection of Clients and Staff

Subchapter D. Client Abuse, Neglect, and Exploitation in Registered Boarding Homes

• 25 TAC §§404.101-404.107

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§404.101-404.107, concerning client abuse, neglect, and exploitation in registered boarding homes. The new subchapter provides procedures by which mental health and mental retardation authorities under the auspices of TDMHMR will receive complaints and investigate allegations of abuse, neglect, and exploitation of elderly or disabled persons residing in boarding homes to which clients are referred.

Sue Dillard, director, Office of Standards and Quality Assurance, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections. The anticipated cost to the state will be approximately \$127,500, or \$850 per investigation for approximately 30 investigations annually. There is no anticipated cost to local government or small businesses as a result of administering the sections as proposed, although the agreement may require the reallocation of existing staff resources.

Ms. Dillard also has determined that for each year of the first five years the sections are in

effect the public benefit anticipated is the provision of procedures to ensure that allegations of abuse or neglect of elderly or disabled persons residing in boarding homes are received. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Linda Logan, rules coordinator, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

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

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

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

TRD-8903475 Pattilou Dawkins
 Chairman
 Texas Board of Mental
 Health and Mental
 Retardation

Earliest possible date of adoption: May 26, 1989

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

◆ ◆ ◆
TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

The following proposal submitted by the Texas Parks and Wildlife Department will be serialized beginning in the April 28, 1989 issue of the *Texas Register*. The earliest possible date of adoption is May 26, 1989.

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing
31 TAC §§65.6, 65.7, 65.11, 65.14, 65.15, 65.33, 65.39, 65.44, 65.46, 65.71, 65.78, 65.80 (amendments).

◆ ◆ ◆
Part II. Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter P. Alligators

• 31 TAC §§65.352, 65.354-65.359, 65.361, 65.368

The Texas Parks and Wildlife Commission proposes new §65.363 and §65.364 and amendments to §§65.352, 65.354, 65.355, 65.356, 65.357, 65.358, 65.359, 65.361, and 65.368 of the alligator proclamation, concerning the taking, possession, and propagation of alligators statewide. These sections are designed to prevent depletion or waste, while enhancing utilization of the resource. The

proposed sections are based upon scientific study and population monitoring, as documented in records available for public inspection at the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, 1-800-792-1112, extension 4505 or (512) 389-4505. The amendments and new sections are consistent with federal requirements to qualify alligators and alligator parts from Texas for international export under the convention on international trade in endangered species of wild fauna and flora. Alligators in Texas are not endangered but their similarity in appearance to endangered crocodylian species requires controls on take and commerce to minimize illegal marketing.

The proposed regulations that differ significantly from the existing alligator regulations are summarized as follows.

The amendments to §65.352 redefine alligator farmer and newly define alligator egg collector and hatchling alligator for reference to new regulations.

The amendments to §65.354 increase fees for resident alligator hunter's license, alligator hide tags, and the alligator import permit; establish fees for nest stamps and hatchling tags; define who may collect and possess alligator eggs and hatchlings; and eliminate the requirement for orientation of first-time alligator hunter licenses.

The amendments to §65.355 remove the minimum size length on harvested alligators and specify the method of attachment of the line used on alligator taking devices.

The amendments to §65.356 require alligator farmers to notify department personnel before skinning an alligator that has died unexpectedly, require alligators to be verified before being exported, and require documentation to accompany unverified alligators.

The amendments to §65.357 change the harvest season from 17 to 24 days with fixed dates of September 7-30 and provide for the taking of hatchling alligators and eggs during specified periods authorized by the department.

The amendments to §65.358 allow alligator hunters to possess live, tagged hatchling alligators under a new harvest procedure and restrict the possession of alligator eggs to alligator farmers and alligator egg collectors.

The amendments to §65.359 provide for control of commerce in wild alligator eggs and hatchlings.

The amendments to §65.361 set out report requirements for alligator nest stamp and hatchling tag recipients and reduces likelihood for delinquency in filing reports.

New section §65.363 sets up regulations to guide the collection of alligator eggs and hatchlings from the wild to provide stock for alligator farms.

New section §65.364 provides for more stringent regulation of alligator farming, including minimum facility requirements and provisions for inspection by department personnel.

The amendment to §65.368 allows the use of a broader array of harvest methods on wildlife management areas to facilitate harvest research conducted in conjunction with scheduled public hunts.

James E. Dickinson, director of finance, has determined that during the first five-year period that the proposed amendments and new sections will be in effect, there will be minimal fiscal implications on units of local

governments and small businesses as a result of enforcing and administering the amendments. There will be fiscal implications on state government as identified in the fol-

lowing table and fees are proposed to offset these costs primarily related to expansion of alligator farming interests and management/research necessary to continue the annual sustained-yield harvest from the wild.

Effect on State Government

	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Estimated additional costs	\$100,110	\$202,408	\$404,065	\$405,315	\$405,315
Estimated reduction in costs	N/A	N/A	N/A	N/A	N/A
Estimated increase in revenue	\$73,500	\$85,400	\$106,500	\$107,500	\$117,500

Dr. Bruce Thompson, alligator program director, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be provision of an expanded alligator production industry and enhanced harvest of alligators from the wild consistent with the available alligator resources.

There will be improved controls on alligator production and harvest to ensure that alligators harvested and marketed from Texas continue to meet federal requirements for approved international export which is necessary for maximum value of hides and parts.

Provision of minimum alligator farm facility requirements will enhance the well-being and ultimate value of alligators maintained in captivity, thereby improving public perceptions of captive facilities.

There will be economic costs to individual alligator hunters and farmers who choose to participate in alligator program opportunities and are required to comply with the proposed sections. These individuals are able to obtain financial gain from alligators harvested and sold, thus, they are directly paying management and research costs associated with their use of the public alligator resource in Texas. Secondary market benefits, as yet unmeasured, also accrue to others who are indirectly involved with the growing alligator industry, primarily in Southeast Texas.

The foundation of these amendments and new sections on sound alligator and crocodilian management principles as practiced in the United States and other countries indicates that the net value of economic benefits to the state will be positive while generating continuing advantage to maintain wetlands that support alligators and other native wildlife.

Comments on the proposed new sections and amendments may be submitted to Dr. Bruce Thompson, Alligator Program Director, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, (512)389-4505 or 1-800-792-1112, extension 4505.

The amendments and new sections are proposed under the Texas Parks and Wildlife

Code, Chapter 65, which provides the Texas Parks and Wildlife Commission with the authority to adopt regulations for the taking, possession, propagation, transportation, exportation, importation, sale, and offering for sale of alligators or parts of alligators as considered necessary to manage the species.

§65.352. Definitions.

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

Alligator egg collector—A licensed alligator hunter who collects alligator eggs from wild alligator nests and transports or delivers them as prescribed by department authorization.

Alligator farmer—A person who holds live alligators in captivity or who propagates alligators to take for the purpose of selling alligators, hides, meat, or other parts of an alligator.

Hatchling alligator—Any alligator less than 12 inches in length.

§65.354. Licenses, Permits, and Fees.

(a) The licenses and fees required for activities authorized by this subchapter are as prescribed under provisions of the Texas Parks and Wildlife Code, Chapter 65, or as prescribed in this subsection, and are:

- (1) \$35 [25] for a resident alligator hunter's license;
- (2)-(4) (No change.)
- (5) \$15 [5] for an alligator import permit fee;
- (6) (No change.)
- (7) \$20 [15] for each alligator hide tag fee;
- (8) \$200 for a resident alligator parts dealer permit fee; [and]
- (9) (No change.)
- (10) \$50 for each alligator nest

stamp fee; and

(11) \$10 for each alligator hatchling tag fee.

(b) No person may take, attempt to take, possess, or accompany another person who is attempting to take an alligator in this state during the open season established in this subchapter for taking alligators or collect, attempt to collect, possess or accompany another person who is attempting to collect hatchling alligators unless he or she has acquired and possesses an alligator hunter's license.

(c) (No change.)

(d) An alligator farmer permit must be acquired by any person possessing one or more live alligators or alligator eggs.

(e) (No change.)

(f) No person may remove and possess alligator eggs from wild nests or accompany anyone removing eggs from wild nests unless he or she has acquired and possesses an alligator hunter's license and an alligator egg collector's validation. Egg collector's validations will only be issued to those persons who demonstrate competency in egg collection and handling, have necessary equipment accessible, and complete the prescribed application form provided by the department.

(g)[(f)] All licenses and permits prescribed in this subchapter are valid from September 1 or from the date of issuance, whichever is later, until the following August 31 unless otherwise provided in this subchapter.

[(1) First time applicants for an alligator hunter's license must attend an orientation session as prescribed by the department prior to issuance of a license.]

(h)[(2)] Applicants for an alligator buyer's license and alligator parts dealer permit must comply with federal licensing and permit requirements to engage in com-

merce involving alligators, alligator hides, and parts [prior to issuance of an alligator buyer's license or alligator parts dealer permit].

§65.355. Means and Methods.

(a) There are no size restrictions on alligators taken during the general open season. [Alligators captured alive in the wild that are less than four feet long from snout to tip of tail or in excess of the harvest quota must be released alive immediately. Alligator hunters may not kill or possess any alligator that is less than four feet long from snout to tip of tail.]

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

(e) Hooks, harpoons, gigs, snares, and arrows may be used only when a line of at least 300-pound test is securely attached to the hook or head of the device in such a manner to prevent separation from the hook or head until the carcass is retrieved. The other end of the line must be attached to a stationary or floating object capable of maintaining line above water when an alligator is attached.

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

§65.356. Hide Tag Procurement and Tagging Requirements.

(a) Alligator hide tags may be obtained as follows:

(1) Nuisance control hunter—as provided by the department in accordance with §65.360 of this title (relating to Nuisance Alligator Control).

(2) Alligator farmers—upon written request to the department at least 30 days prior to scheduled killing, subject to verification of available stock by department personnel provided that hide tags may be obtained at any time upon request to and approval from the department for individual alligators in stock that have died unexpectedly, provided that department personnel are notified before skinning of those alligators begins.

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

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

(d) Alligators or hides of alligators taken in Texas shall be presented to department personnel for examination no later than 5 p.m. of the day following the last day of the open season. No alligators taken in Texas may be transported outside the state before such examination takes place.

(e) All alligators which have not been examined by department personnel must be accompanied by the corresponding, completed hunters report.

§65.357. Open Seasons, Open Areas, and Bag Limits.

(a) Open seasons are as follows:

(1) The general open season for taking alligators in the wild shall begin on September 7 and close on September 30 [run for 17 consecutive days beginning on the first Friday in September].

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

(4) Hatchling alligators and eggs may be taken only during periods specified in department authorization forms.

(b) The open areas are:

(1) (No change.)

(2) Alligators in the wild in the remainder of the state may be taken only under [nuisance control] provisions as prescribed by the department.

(c) (No change.)

§65.358. Possession.

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

(c) No person other than a licensed alligator farmer may possess live alligators at any time, provided that a licensed alligator hunter may possess a live alligator on any legal capture device while retrieving that animal to be dispatched or live, tagged hatchling alligators during specified hatchling collection periods and while in possession of a hatchling collection authorization.

(d) No person other than a licensed alligator farmer may possess alligator eggs at any time except that an alligator egg collector may possess alligator eggs provided that each clutch of eggs is accompanied by a legal nest stamp and documented by an egg collection authorization.

§65.359. Importation, Exportation, Purchase, and Sale.

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

(c) Purchases of alligators and alligator parts are restricted as follows:

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

(4) An alligator farmer may purchase live alligators only from another alligator farmer, an import permit holder, a hatchling tag recipient, an alligator hunter possessing tagged hatchlings, or the department.

(5) An alligator farmer may purchase alligator eggs only from another alligator farmer, an alligator egg collector, an alligator nest stamp recipient, or the department.

(6) [(5)] An import permit holder may not purchase from another person in Texas unless licensed or permitted as in paragraphs (2)-(4) in this subsection.

(7)[(6)] A person engaged in

wholesale or retail business involving alligator parts or with potential for such commerce may without a permit purchase only processed or manufactured alligator parts or processed or manufactured alligator parts from another person authorized to sell alligators or alligator parts in Texas.

(d) Sales of alligators and alligator parts are restricted as follows.

(1) A licensed alligator hunter may sell alligators taken during the general open season only to a licensed alligator buyer and tagged hatchling alligators only to licensed alligator farmers designated on hatchling collection authorization forms.

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

(5) Alligator egg collectors and alligator nest stamp recipients may sell alligator eggs only to licensed alligator farmers designated on egg collection authorization forms.

(6)[(5)] Any person holding a valid license or permit issued under this subchapter, other than a licensed alligator hunter, may sell processed or manufactured alligator parts to a person engaged in wholesale or retail business involving alligator parts or with potential for such commerce.

(7)[(6)] Any person engaged in wholesale or retail business involving alligator parts or with potential for such commerce may sell legally obtained and documented processed or manufactured alligator parts to anyone.

(e) Legally tagged and documented alligators and parts of alligators taken in Texas may be exported by all categories of license and permit holders subject to §65.361 of this title (relating to Report Requirements) provided that no live alligators or eggs originating in Texas may be exported outside of the United States without specific department authorization.

§65.361. Report Requirements.

(a) Report forms provided by the department must be completed and filed with the department by all persons who have been issued an alligator hunter's license, alligator buyer's license, alligator import permit, alligator farmer permit, alligator parts dealer permit, alligator nest stamp(s), alligator hatchling tag(s), or alligator hide tag(s) in accordance with this section. Reports shall include but not be limited to the information specified in this section.

(1) (No change.)

(2) An alligator hunter shall file a report by 5 p.m. on the day after the end of the open season which [to] includes [include] hide tag numbers used, date taken

for each alligator, county of take, landowner of property where taken, the sex and carcass length of each alligator tagged, and the method of skinning for each alligator tagged. Subsequent reports shall include the tag number; transaction date and name, address, and license number of buyer that purchased each hide or alligator part sold shall be filed by October 31 and on the last day of each month thereafter until final disposition of all hides is reported.

(3) () (No change.)

(8) An alligator nest stamp recipient shall file by August 15 a report which specifies the number of nest stamps utilized, the total number of eggs collected, the name of the egg collector, and the name of the alligator farmer to whom the eggs were transferred. Any unused nest stamps must be returned with the report [All categories of license and permit holders shall file with the department by September 30 each year a report, on a prescribed form, of all alligators and alligator parts sold or transported out of Texas during the previous license year or permit period].

(9) An alligator hatchling tag recipient shall file by October 31 a report which specifies the number of hatchlings collected, the hatchling tag numbers applied, the name of the alligator hunter(s) performing the collection, and the name of the alligator farmer to whom the hatchlings were transferred. Any unused hatchling tags must be returned with the report.

(b) Any person who is delinquent in excess of 30 days in returning hide tags, hatchling tags, or nest stamps, or filing a report required by this subchapter commits an offense [shall be ineligible for renewal of license or permit or to obtain hide tags until the delinquency is corrected].

§65.363. Alligator Egg and Hatchling Collection.

(a) Alligator nest stamps and hatchling tags may be obtained as follows:

(1) Landowners and agents—upon application to the department on forms provided for nest stamp and hatchling tag issuance.

(A) Maximum stamp tag issuance to individual landowners or their agents shall be determined by the department. Landowners or their agents shall certify total acreage owned or represented on a form prescribed by the department at the time of application.

(B) Agents must present a notarized document from the landowner verifying their selection to represent that landowner and the total acreage represented to obtain nest stamps and/or hatchling tags.

(C) Owners or agents may transfer nest stamps only to permitted egg collectors and hatchling tags only to licensed alligator hunters.

(2) Validated alligator egg collectors may obtain nest stamps from a landowner or landowner's agent.

(3) Licensed alligator hunters may obtain hatchling tags from a landowner or landowner's agent.

(b) If an authorized agent for a landowner or agent to issue a nest stamp or hatchling tag for a tract of land or water other than the tract for which the tag was originally issued and an alligator hunter or egg collector shall collect only on tracts assigned for the tags or stamps he or she possesses.

(c) An alligator egg collector must possess on his or her person one or more current nest stamps and an egg collection authorization form, provided that only one alligator egg collector needs to possess nest stamps and the authorization form among a group of collectors accompanying each other.

(d) An alligator hunter in the act of collecting hatchlings must possess on his or her person one or more current hatchling tags and a hatchling collection authorization form, provided that only one hunter needs to possess hatchling tags and the authorization form among a group of hunters accompanying each other.

(e) Alligator eggs and hatchlings shall be collected from the wild by hand or non-injurious handheld device and must be appropriately marked as prescribed by these rules to identify them as being legally collected.

(1) Each clutch of eggs must be accompanied immediately upon collection and throughout transportation and incubation by a nest stamp which indicates the location of collection, the date and time of collection, and the number of eggs collected.

(2) Each hatchling must upon collection immediately be tagged with a department hatchling tag according to instructions issued with the tag.

(f) Alligator eggs and hatchlings may only be collected during time periods specified by the department as indicated on the egg collection authorization form or hatchling collection authorization form.

§65.364. Alligator Farm Facility Requirements.

(a) All first-time applicants for an alligator farmer's permit must show evidence of the following minimum facilities during a required facility examination by department personnel prior to permit issuance:

(1) secured premises with adequate barriers to prevent escape of enclosed alligators and entry by alligators from outside the farm and to deter theft of alligators.

(2) reliable source of clean, fresh water;

(3) provision for both dry ground and pooled water within the secured area;

(4) provision for winter protection, either through adequate denning space or an enclosed, controlled-temperature environment.

(b) All alligator farmers possessing alligator eggs outside an alligator nest shall house such eggs in identifiable original clutch groups in an incubator providing constant temperature and humidity conditions.

(c) All alligator farmers possessing hatchling alligators shall house such hatchlings in rearing tank(s) containing dry and wet areas of sufficient surface area to permit all alligators to completely submerge in water and completely exit from water and orient in any direction, without touching the sides of the tank(s).

(d) Farmers shall house alligators of different lengths into at least three groups, providing separation for all alligators less than two feet in length, two to four feet in length, and over four feet in length. Land and water areas sufficient for complete submersion or complete exit from water shall be provided for each group of alligators held.

(e) Complete written records of all changes in alligator stock shall be kept and made available for examination by department personnel. Shipping tickets, invoices, or bills of lading shall be maintained to show source of supply or disposition of alligator stock. Nesting activity of captive alligators shall be recorded, with a daily account of nests constructed and eggs collected.

(f) All facilities, alligator stock, and records are subject to examination by department personnel prior to permitting and thereafter during farm operation.

§65.368. Exceptions.

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

(d) [The department may authorize the use of] Notwithstanding other provisions in these rules, firearms and other alligator harvest methods may be used to take free-swimming alligators on department wildlife management areas when authorized in Subchapter H of this chapter (relating to Type I Wildlife Management Areas Hunting and Fishing or Subchapter U of this chapter (relating to Type II Management Area—Public Hunting Lands)). [J. D. Murphree wildlife management area].

(e) (No change.)

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903554

Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Earliest possible date of adoption: May 26, 1989

For further information, please call: (512) 389-4772

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administrator

Subchapter M. Inheritance Tax

• 34 TAC §3.228

The Comptroller of Public Accounts proposes an amendment to §3.228, concerning payment of tax, penalty and interest, refunds (date of death on or after September 1, 1983). The mandatory language directing a testamentary estate to obtain various bank loan denials before a payment extension request can be considered was modified to become a discretionary requirement. Additionally, requests for state inheritance tax payment or filing extensions must now be filed with the comptroller prior to the expiration of the original or extended due date for that report. The requirement to make state inheritance tax payments in proportion to the federal inheritance tax payments remitted by the estate was moved from subsection (d)(2)(c) to subsection (d)(1)(g) on general information.

Jim Shear, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. This section is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Shear also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in not requiring the public to incur the expense of obtaining various bank loan denials before payment extension requests can be considered to become a discretionary requirement. It also provides better information about tax liabilities by moving the information about making state tax liabilities in proportion to the federal inheritance tax payments into the general information section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

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

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

§3.228. *Payment of Tax, Penalty and Interest, Refunds (Date of Death on or After September 1, 1983).*

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

(d) Extension of time to pay.

(1) General information.

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

(C) The comptroller must be notified immediately of any changes to, or cancellation of, the Internal Revenue Service payment extension [payout agreement]. If the Internal Revenue Service payment extension [payout agreement] is cancelled prior to its conclusion, the inheritance tax liability must be paid within 10 days of the cancellation.

(D)-(F) (No change.)

(G) The amount of each state inheritance tax payment must be at least in the same proportion to the total inheritance tax liability as the federal estate tax payment is to the total federal estate tax liability and is due at the same time the federal estate taxes are due or the federal estate tax payment is made, whichever is earlier.

(2) Extensions before July 21, 1987.

(A) For inheritance tax due before July 21, 1987, if the due date for paying the federal estate tax is extended by the Internal Revenue Service, then the state inheritance tax shall be due and payable on the date specified by the Internal Revenue Service, except as provided by subsection (d)(1)(G) of this section [subparagraph (c) of this paragraph].

(B) (No change.)

[(C) The amount of each state inheritance tax payment must be at least in the same proportion to the total inheritance tax liability as the federal estate tax payment is to the total federal estate tax liability and is due at the same time the federal estate taxes are due or the federal estate tax payment is made, whichever is earlier.]

(C)[(D)] At a minimum, payments will consist of equal annual payments of principal, and of interest computed at 10% of the unpaid tax balance for the

entire period of the extension payout.

(D)[(E)] A copy of the Supplemental Form 706 filed yearly with the Internal Revenue Service, or other such documentation showing the adjusted estate tax and federal credit balances, or any other changes in the financial condition of the estate, must also be filed with the comptroller at the time they are required to be filed with the Internal Revenue Service.

(3) Extension on or after July 21, 1987.

(A) (No change.)

(B) The extension request to the Comptroller must be made on or before the original due date or extended due date and include the following (estimates should be made if exact amounts are unknown):

(i)-(vii) (No change.)

(viii) the provisions of any extension or payout agreement granted by or requested from the Internal Revenue Service; and

(ix) the proposed terms of the extension being requested? [and]

(4)[(x)] Denial of loan applications. Copies of the loan applications and letters stating the reasons the loan was denied may be required from at least two financial institutions refusing to loan enough money to pay the state inheritance taxes.

(5)[(4)] Federal deductions. Interest expense which is allowed as a deduction under federal estate tax law indirectly reduces the state inheritance tax liability through a reduction of the allowable federal credit for state death taxes. Estates which pay their inheritance tax liability by the original due date, but are granted an extension to pay by the Internal Revenue Service, may apply for a refund annually after the federal interest deduction has been determined. Estates which are paying both state inheritance tax and federal estate tax liabilities under an extended payment plan may reduce the annual payment to the state by an amount directly proportional to the reduction in federal payments allowed by the Internal Revenue Service. A copy of the Supplemental Form 706 filed with the Internal Revenue Service showing the adjusted federal and state tax will form the basis for the adjustment to the inheritance tax payments.

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

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

Issued in Austin, Texas, on April 13, 1989.

TRD-8603429

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 26, 1989

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

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing-Purchase Vouchers

• 34 TAC §5.53

The Comptroller of Public Accounts proposes an amendment to §5.53, concerning requirements for certain types of purchase vouchers. The amendment is necessary in order to eliminate a redundant requirement when a state agency submits vouchers for the purchase of magazine or newspaper subscriptions.

Jim Shear, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Shear also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in faster preparation by state agencies of certain types of vouchers for payment. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kenny McLaskey, Director of Claims, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Texas Government Code, §403.011, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

§5.53. Requirements for Certain Types of Purchase Vouchers.

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

(e) Magazine and newspaper subscriptions. The purchase of a magazine or newspaper subscription may be classified as either the purchase of a capital asset (Comptroller Object Code 7382) or a consumable (Comptroller Object Code 7303), depending upon whether a state agency intends to permanently retain individual issues. [Agencies must state on the purchase voucher whether the magazines or newspapers are intended for permanent retention and must select the appropriate comptroller object code.] The payment of a magazine or newspaper subscription is authorized not earlier than six weeks prior the starting date of the subscription.

(f)-(j) (No change.)

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

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

Issued in Austin, Texas, on April 13, 1989.

TRD-8903428

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 26, 1989

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

• 34 TAC §5.55

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

The Comptroller of Public Accounts proposes the repeal of §5.55, concerning prompt payment act rules. The section is being repealed in order that a substantially revised section dealing with the same subject matter may be adopted.

Jim Shear, director of the comptroller's economic analysis center, has determined that the repeal of the section will not result in any fiscal implications to the state or to units of local government or small businesses.

Mr. Shear also has determined that this change will benefit the public in that state agencies will be able to comply with a more easily understood rule. There are no additional costs to individuals.

Comments on the repeal may be submitted to Kenny McLaskey, Director of Claims, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Texas Government Code, §403.011, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

§5.55. Prompt Payment Act Rules.

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

Issued in Austin, Texas, on April 13, 1989.

TRD-8903427

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 26, 1989

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

The Comptroller of Public Accounts proposes new §5.55, concerning prompt payment act requirements for state agencies. The existing §5.55, concerning prompt payment act rules, is simultaneously being repealed in order that a substantially revised section dealing with the same subject matter may be adopted. The new section is necessary in order to

make the section more closely parallel to the Prompt Payment Act.

Jim Shear, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no significant revenue impact on the state or local government or small businesses as a result of enforcing or administering the section.

Mr. Shear also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that state agencies will be able to comply with a more easily understood rule. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the new section may be submitted to Kenny McLaskey, Director of Claims, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Texas Government Code, §403.011, which provides the Comptroller with the authority to prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

§5.55. Prompt Payment Act Requirements for State Agencies.

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

(1) State agency-

(A) A board, commission, department, office, or other agency in the executive branch of state government that was created under the constitution or a statute of the state, including an institution of higher education as defined by the Texas Education Code, §61.003, and a river authority;

(B) the legislature or a legislative agency; or

(C) the supreme court, the court of criminal appeals, a court of appeals, a state judicial agency, or the State Bar of Texas.

(2) Payment—Money owed to a vendor from whom a state agency acquires property or services.

(3) Vendor—A person, corporation, association, partnership, or other legal entity that supplies goods or services, or both, to a state agency.

(b) A payment based on a contract executed on or after July 1, 1986, is due no later than the 45th calendar day after the latest of the following:

(1) the day the state agency received the goods;

(2) the day the vendor completed performing its services for the state agency; or

(3) the day the state agency received the invoice for the goods and services.

(c) A payment based on a contract executed on or after September 1, 1987, is due no later than the 30th calendar day after the latest of the following:

(1) the day the state agency received the goods;

(2) the day the vendor completed performing its services for the state agency; or

(3) the day the state agency received the invoice for the goods and services.

(d) When a state agency does not mail or electronically transmit a payment to a vendor or the vendor's financial institution within the applicable time period, the state agency is liable to the vendor for interest in accordance with the following provisions.

(1) Beginning on the day after the payment is due, interest accrues on the unpaid balance at the rate of 1.0% per month. The interest ceases to accrue on the date a state agency mails or electronically transmits the payment to the vendor or the vendor's financial institution.

(2) A state agency may not pay interest to a vendor unless the vendor submits a claim for the interest to the agency no later than six months after the vendor receives the payment.

(3) A claim for interest submitted by a vendor to a state agency must be accompanied by the envelope in which the warrant was received or other proof showing the date on which the payment was mailed or electronically transmitted.

(e) A state agency may pay interest to a vendor only through the submission of a purchase voucher to the Comptroller of Public Accounts. A payment of interest to a vendor must be submitted on a separate purchase voucher from the voucher used to pay the principal of the amount owed to the vendor. A purchase voucher from a state agency for the payment of interest to a vendor,

(1) shall be accompanied by:

(A) a copy of the letter or other document from the vendor claiming interest; and

(B) a statement from the state agency showing how the dispute between the agency and the vendor, if any, was resolved.

(2) shall state:

(A) the agency voucher number of the voucher previously submitted to the comptroller to pay the principal amount

owed the vendor; and

(B) the number and date of the warrant that was issued in accordance with the voucher, if applicable.

(3) shall use comptroller object code 7806; and

(4) shall comply with the comptroller's general requirements for purchase vouchers as specified in §5.52 of this title (relating to Requirements for All Purchase Vouchers) and §5.53 of this title (relating to Requirements for Certain Types of Purchase Vouchers).

(f) If a state agency believes that an invoice from a vendor is erroneous, the agency shall notify the vendor no later than the 21st day after the date the agency receives the invoice.

(g) When a dispute is resolved in a vendor's favor, the vendor shall receive interest on all invoices for which payment has not been received. This interest shall be calculated from the original due date of the payment, as if no dispute ever existed between the state agency and the vendor.

(h) When a dispute is resolved in a state agency's favor, the vendor that submitted the original invoice shall submit a corrected invoice to the agency. Interest shall accrue if the corrected invoice is not paid by the appropriate date.

(i) This section does not apply to payments made by a state agency if:

(1) the terms of a contract between the state agency and the vendor specify other times and methods of payment or resolving disputes;

(2) the terms of a contract between the state agency and the vendor specify a different interest owed on overdue payments;

(3) the terms of a federal contract, grant, regulation, or statute prevent the state agency from making a timely payment with federal funds; or

(4) the invoice is not mailed to the state agency in strict compliance with the instructions, if any, on the purchase order covering the payment.

(j) When the Prompt Payment Act applies to a particular transaction between a state agency and a vendor, no late charge or interest in addition to the interest authorized to be paid by that Act may be paid to the vendor.

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

Issued in Austin, Texas, on April 13, 1989.

TRD-8903428

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 26, 1989

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Department of Human Services

Chapter 29. Purchased Health Services

Subchapter F. Physician Services

The Texas Department of Human Services (DHS) proposes amendments to §§29.502, 29.603, and 29.606, concerning authorized physician services, authorized inpatient hospital services, and reimbursement methodology for inpatient hospital services. The amendments are in response of the Medicare Catastrophic Coverage Act of 1988, §302 (Public Law 100-360). The amendments specify that DHS will waive its spell-of-illness limitations for medically necessary inpatient hospital and physician services provided to recipients less than age one. The amendments also describe the methodology for making outlier payment adjustments for admissions with exceptionally high costs or exceptionally long lengths of stay. The outlier payment adjustments are applicable to inpatient hospital services provided to recipients less than age one in hospitals reimbursed under DHS's prospective payment system.

DHS is also amending §29.606 to redefine the term "base year payment per case." The amendment specifies that, in calculating the base year payment per case, the department or its designee will use the interim rate established at tentative or final settlement, if applicable, of the most recent cost reporting period up to and including the cost reporting period associated with the base year.

DHS is sending a copy of the proposed amendments to each DHS field office, where they will be available for public review.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the amendment to §29.606(b) is in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section. Mr Raiford has determined that for the first five-year period the amendments to §§29.502, 29.603, and 29.606(d), (f), (g), and (h) are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effect on state government for the first-five year period the sections are in effect is an estimated additional cost of \$1,269,760 for fiscal year 1989; \$7,482,610 for FY 1990; \$7,550,150 for FY 1991; \$7,575,470 for FY 1992; and \$7,900,500 for FY 1993. The effect on local government for the first five-year period the sections are in effect is an estimated additional revenue of \$740,000-\$1,116,000 for FY 1989; \$4,632,000-\$6,948,000 for FY

1990; \$4,920,000-\$7,380,000 for FY 1991; \$5,200,000-\$7,812,000 for FY 1992; and \$5,520,000-\$8,280,000 for FY 1993. There will be no fiscal implications for small businesses.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be appropriate reimbursement of hospitals and physicians for inpatient services provided to children under age one and whose length of stay or costs of care are excessive. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-184, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the Texas Register.

• 40 TAC §29.502

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.502. Authorized Physician Services.

(a) (No change.)

(b) Except as otherwise specified in §29.1125 of this title (relating to Organ Transplants), payment for physician visits to a hospital inpatient is limited to medically necessary visits that occur during a Title XIX spell of illness or during a period which coincides with a Title XIX spell of illness. The Title XIX spell-of-illness limitations are waived for medically necessary inpatient services provided to recipients less than age one.

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

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903564

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Proposed Date of Adoption: July 1, 1989.

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



Subchapter G. Hospital Services

• 40 TAC §29.603, §29.606

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.603. Authorized Inpatient Hospital Services. Inpatient hospital services include those items and services that are ordinarily furnished by the hospital for the care and treatment of inpatients and are provided under the direction of a physician in a Title XIX hospital or a Title XVIII or XIX out-of-state hospital approved for participation. Except as otherwise specified, and subject to the qualifications, limitations, and exclusions set forth, benefits are provided for hospital services set forth as follows when provided to eligible recipients.

(1) Duration of care. Except as otherwise specified in §29.1125 of this title (relating to Organ Transplants), when an eligible recipient is confined as an inpatient in a Title XIX hospital, or a Title XVIII or XIX out-of-state hospital approved for participation, the health insuring agent pays for medically necessary inpatient hospital services actually furnished to the recipient during the first 30 days of each Title XIX spell of illness. The Title XIX spell-of-illness limitations are waived for medically necessary inpatient services provided to recipients less than age one. The services are subject to the utilization review requirements of the Texas Medical Assistance Program.

(2) Benefits for inpatient hospital care. The hospital services for which benefits are provided under paragraph (1) of this section consist of the following:

(A) (No change.)

(B) either the first three pints of whole blood or the first three units of packed red cells, provided that such is not available without cost.

(B) [(C)] All other care in the nature of usual hospital services [except occupational therapy].

(C) [(D)] Maternity care, including the usual and customary care for female recipients.

§29.606. Reimbursement Methodology for Inpatient Hospital Services.

(a) (No change.)

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

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

(6) Base year payment per case—The payment that would have been made to a hospital [at the time covered inpatient hospital services were provided] if the department or its designee reimbursed the hospital under similar methods and procedures used in Title XVIII of the Social Security Act, as amended, effective October 1, 1982, by Public Law 97-248. In calculating the base year payment per case, the department or its designee uses the interim rate established at tentative or final settlement, if applicable, of the most recent cost reporting period up to and including the cost reporting period associated with the base year.

(7)-(9) (No change.)

(c) (No change.)

(d) Add-on payments [and outliers]. There are no separate add-on payments [or outliers]. The department or its designee:

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

(e) (No change.)

(f) Patient transfers. If a patient is transferred, the department or its designee establishes payment amounts as specified in paragraphs (1)-(4) of this subsection unless the policy in subsection (g) of this section is applicable. If appropriate, the department or its designee manually reviews transfers for medical necessity and appropriate payment.

(1) (No change.)

(2) If the patient is transferred to another hospital, the department or its designee pays the receiving hospital the total payment amount of the patient's DRG. The department or its designee pays the transferring hospital a DRG per diem. The DRG per diem is based on the following formula:

$$\frac{\text{DRG relative weight} \times \text{standard dollar amount}}{\text{DRG mean length of stay (LOS)}} \times \text{LOS}$$

The LOS is the lesser of the DRG mean LOS, the claim LOS, or 30 days. The 30-day factor is not used in establishing a DRG per diem amount for a medically

necessary stay of a recipient less than age one.

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

(g) Patient ineligibility. If a patient loses his eligibility for Title XIX benefits

during his hospital stay, the department or its designee bases the payment to the hospital on the number of days the patient was eligible using the following formula:

$$\frac{(\text{DRG relative weight} \times \text{standard dollar amount}) \times \text{Eligible LOS}}{\text{DRG mean LOS}}$$

The eligible LOS is the lesser of days eligible or DRG mean LOS. Days eligible equals the lesser of the number of days of eligibility or the number of days remaining under the patient's current 30-day inpatient hospital limit. The 30-day inpatient hospital limit does not apply to medically necessary services provided to a recipient less than age one.

(h)-(p) (No Change.)

(q) Day and cost outliers. Effective for inpatient hospital admissions beginning on or after July 1, 1989, the department or its designee pays day or cost outliers for medically necessary inpatient services provided to recipients less than age one in hospitals reimbursed under the prospective payment system. If an admission qualifies for both a day and a cost outlier, only the outlier resulting in the highest payment to the hospital is paid.

(1) To establish day outliers, the department or its designee first removes from the current base year data those admissions whose actual lengths of stay are greater than or equal to plus or minus three standard deviations from the arithmetic mean length of stay for each DRG. The department or its designee then recomputes the arithmetic mean length of stay and the standard deviations for each DRG. Inpatient days which

exceed two standard deviations beyond the arithmetic mean length of stay for the DRG are eligible for a day outlier. Payment is based on 70% of a per diem amount of a full DRG payment. The per diem amount is established by dividing the full DRG payment amount by the arithmetic mean length of stay for the DRG.

(2) To establish cost outliers, the department or its designee first determines what the amount of reimbursement for the admission would have been if the department or its designee reimbursed the hospital under similar methods and procedures used in the Social Security Act, Title XVIII, as amended, effective October 1, 1982, by Public Law 97-248, Tax Equity and Fiscal Responsibility Act (TEFRA). The department or its designee then determines the outlier threshold by using the greater of the full DRG payment amount multiplied by 1.5 or an amount determined by selecting the lesser of the universe mean of the current base year data multiplied by 11.14, or the hospital's standard dollar amount multiplied by 11.14. The hospital's standard dollar amount is the amount that the department or its designee uses to reimburse the hospital under the prospective payment system. The outlier threshold is subtracted from the amount of reimbursement for the admission established

under the TEFRA principles. The department or its designee multiplies any remainder by 70% to determine the actual amount of the cost outlier payment.

(3) If a recipient less than age one is admitted to and remains in a hospital past his or her first birthday, medically necessary inpatient days and hospital charges during the admission are included in calculating the amount of any day or cost outlier payment.

(a) [Additional payments. The department or its designee makes additional lump-sum payments to hospitals within Texas that have at least 20 Title XIX stays based on paid claims data from the latest available state fiscal year and that serve a large percentage of Title XIX-eligible children less than four years old at the time of their admission who have long lengths of stay.

(1) Using paid claims data from the latest available state fiscal year, the department or its designee applies the following formula to determine those hospitals that may qualify for additional payments. After the department or its designee applies the formula, the department or its designee arrays each hospital's percentage of Title XIX stays representing children less than four years old in descending order. Those hospitals that are within the upper 2.0% and that are participating in the Texas Medical Assistance Program when funds are disbursed may qualify for additional payments.

$$\frac{\text{Number of Title XIX stays in the hospital of children less than four years old}}{\text{Number of Title XIX stays}} = \text{Percentage of stays representing children less than four years old}$$

(2) For hospitals that qualify in paragraph (1) of this subsection, the department or its designee determines the amount of payment to each hospital based upon the number and intensity of stays in the hospital

of children less than four years old at the time of their admission with actual lengths of stay greater than 29 days. Actual length of stay is defined as the date of discharge minus the date of admission. Actual length

of stay is reduced by days denied based upon medical necessity. The following formula is used to determine each hospital's payment amount:

Sum of relative weights assigned
to stays greater than 29 days
for the hospital X Allocated Fund
Sum of relative weights assigned
to stays greater than 29 days for
all qualifying hospitals

[(3) The department or its designee updates the allocated fund each year by applying the cost-of-living index described in subsection (c) of this section.]

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903583 Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Proposed Date of Adoption: July 1, 1989

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

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Name: Ben Boler

Grade: 9

School: Sweeny High, Sweeny

Adopted Sections

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

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

TITLE 1.

ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 93. Trademark Section: Practice and Procedure

General Information and Correspondence

• 1 TAC §§93.1-93.7

The Office of the Secretary of State of Texas adopts the repeal of §§93.1-93.7, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903440 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.1-93.6

The Office of the Secretary of State of Texas adopts new §§93.1-93.6, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903454 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Representation

• 1 TAC §§93.41-93.44

The Office of the Secretary of State of Texas adopts the repeal of §§93.41-93.44, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

This agency hereby certifies that the rule as

adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 11, 1989.

TRD-8903441 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.41-93.45

The Office of the Secretary of State of Texas adopts new §§93.41-93.45, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903455 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Application for Registration

• 1 TAC §§93.51-93.54

The Office of the Secretary of State of Texas adopts the repeal of §§93. 61-93.64, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903442 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.51-93.55

The Office of the Secretary of State of Texas adopts new §§93.51-93.55, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903467

Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

The Written Application

• 1 TAC §§93.61-93.68

The Office of the Secretary of State of Texas adopts the repeal of §§93. 61-93.68, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903443 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.61-93.68

The Office of the Secretary of State of Texas adopts new §§93.61-93.68, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

One commenter noted that practitioners may have difficulty in obtaining the numeric code used by the United States Patent and Trademark Office to characterize design marks.

The commenter opposed to adoption of the new sections is Arnold, White and Durkee.

The agency wishes to allow any applicant familiar with the design codes to use them. As indicated by the section, the trademark office will provide a design code if none has been provided.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903466 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Drawing

• 1 TAC §§93.81, §93.82

The Office of the Secretary of State of Texas adopts the repeal of §§93.81 and §93.82, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903444 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §93.81, §93.82

The Office of the Secretary of State of Texas adopts new §93.81 and §93.82, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903465 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Specimens

• 1 TAC §§93.91-93.93

The Office of the Secretary of State of Texas adopts the repeal of §§93.91-93.93, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903445

Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.91-93.94

The Office of the Secretary of State of Texas adopts new §§93.91-93.94, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903464 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Classification

• 1 TAC §§93.101-93.103

The Office of the Secretary of State of Texas adopts the repeal of §§93.101-93.103, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16

and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903448 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §93.101, §93.102

The Office of the Secretary of State of Texas adopts new §93.101 and §93.102, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903463 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Examination of an Application and Action by Applicants

• 1 TAC §§93.111-93.116

The office of the Secretary of State of Texas adopts the repeal of §§93.111-93.116, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903447 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701



• 1 TAC §§93.111-93.117

The Office of the Secretary of State of Texas adopts new §§93.111-93.117, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

One commenter noted that §93.113(f) places the burden on the applicant to update the trademark office at the end of any six-month suspension period. The commenter did not suggest revision, but did suggest that any applicant be clearly notified of this burden.

The commenter also noted that §93.115 is a harsh repositioning from the old section. The commenter noted the increasing financial commitments required for various levels of proofs. The commenter also believed that there always should be an opportunity for at least one request for reconsideration of a final action.

The commenter in favor of adoption of §93.113(f) is Arnold, White, and Durkee. The commenter opposing adoption of §93.115 is also Arnold, White, and Durkee.

In the letter acknowledging suspension of action, the office plans to clearly notify an applicant that the applicant has the responsibility to update the trademark office on any suspended application.

The agency also notes that §93.115 does not

alter the long-standing practice of the office. The office rarely makes a final action before its third action, and often waits until its fourth action. The office also notes that the statute does not authorize reconsideration of a final action.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903462 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701



Amendments

• 1 TAC §§93.131-93.134

The Office of the Secretary of State of Texas adopts the repeal of §§93.131-93.134, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903448 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701



• 1 TAC §§93.131-93.134

The Office of the Secretary of State of Texas adopts new §§93.131-93.134. Section 93.134 is adopted with changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657). Sections 93.131-93.133 are adopted without changes and will not be republished.

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

One commenter noted that an applicant might misread §93.134(a) and mistakenly believe that it could register a descriptive mark by simply disclaiming all of its elements. The commenter offered an alternative wording.

The commenter opposing adoption of §93.134(a) is Arnold, White, and Durkee.

The agency agrees with the commenter and adopts his alternative

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

§93.134. Disclaimer by Amendment.

(a) An examiner may require a disclaimer of any unregistrable component (such as descriptive words, abbreviations, names, symbols, terms, slogans, or elements) of a mark otherwise registrable.

(b) An applicant may voluntarily disclaim a component of a mark sought to be registered.

(c) An applicant's failure to comply with a request for disclaimer is sufficient basis for a final action denying registration.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903460 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701



Allowance

• 1 TAC §§93.141, §93.142

The Office of the Secretary of State of Texas adopts the repeal of §§93.141 and §93.142, without changes to the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903449 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Allowance of Registration

• 1 TAC §93.141

The Office of the Secretary of State of Texas adopts new §93.141, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new section will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new section will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903481 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Certificate

• 1 TAC §93.151

The Office of the Secretary of State of Texas adopts the repeal of §93.151, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed section will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeal will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903450 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.151-93.154

The Office of the Secretary of State of Texas adopts new §§93.151-93.154, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on April 11, 1989.

TRD-8903459 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Term and Renewal

• 1 TAC §§93.161-93.164

The Office of the Secretary of State of Texas adopts the repeal of §§93.161-93.164, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903451 Lorna Wassdorf
Special Assistant, Statutory
Filing Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.161-93.164

The Office of the Secretary of State of Texas adopts new §§93.161-93.164. Section 93.164 is adopted with changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657). Sections 93.161-93.163 are adopted without changes and will not be republished.

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the

trademark office.

The commenter stated that if the trademark office should refuse a renewal when less than 60 days remain in the term of registration, the applicant should have a full 60 days in which to respond.

The commenter opposing adoption of the new sections is Arnold, White, and Durkøe.

The agency agrees with the commenter, and adopts his alternative.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

§93.164. Refusal of Renewal.

(a) If the application for renewal is incomplete or defective, the renewal will be refused. The application may be completed or amended in response to a refusal.

(b) The application for renewal will be considered abandoned unless a response to an action by an examiner is made within 60 days or before expiration of the registration period, whichever occurs later.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903450 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Assignment of Marks

• 1 TAC §93.171

The Office of the Secretary of State of Texas adopts the repeal of §93.171, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed section will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeal will delete obsolete, confusing, and ambiguous language.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903452 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

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For further information, please call: (512) 463-5701

• 1 TAC §93.171

The Office of the Secretary of State of Texas adopts the new §93.171, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new section will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new section will reorganize and clarify existing practices and procedures of the trademark office.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903457 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

Cancellation of Registration

• 1 TAC §§93.181-93.183

The Office of the Secretary of State of Texas adopts the repeal to §§93.181-93.183, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The repealed sections will simultaneously be replaced with up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The repeals will delete obsolete, confusing,

and ambiguous language.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903453 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

• 1 TAC §§93.181-93.183

The Office of the Secretary of State of Texas adopts new §§93.181-93.183, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 657).

The new sections will provide up to date, readily understandable rules concerning the filing of trademark documents pursuant to the Texas Business and Commerce Code, Chapter 16.

The new sections will reorganize and clarify existing practices and procedures of the trademark office.

The commenter noted the ambiguity in §93.183(a)'s language that a registration may be cancelled "by a district or appellate court." It is not clear if the language includes federal courts.

The commenter opposing adoption of the new §93.183(a) is Arnold, White, and Durkøe.

The agency notes that the language is that used in the Texas Business and Commerce Code, §16.16. The agency also notes that the trademark office has filed cancellations based upon federal court judgments.

The new sections are adopted under the Texas Business and Commerce Code, Chapter 16 and Texas Civil Statutes, Article 6252-13a, §4, which provides the Office of the Secretary of State with the authority to adopt rules of practice reasonably necessary to carry out its ministerial duties under the Act.

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

Issued in Austin, Texas, on April 11, 1989.

TRD-8903456 Lorna Wassdorf
Special Assistant, Statutory
Filings Division
Office of the Secretary of
State

Effective date: May 8, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 463-5701

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Loans

• 7 TAC §91.701

The Credit Union Commission adopts an amendment to §91.701, without changes to the proposed text as published in the February 7, 1989, issue of the *Texas Register* (14 TexReg 671).

Loans to officials are more restrictive than loans to other members of the credit union. The amendment was developed to provide the board of directors of a credit union more latitude for granting such loans while still preserving prudent oversight.

The board of directors of a credit union having an estimated solvency ratio (net worth) of 104 or greater, can establish new limitations on loans to officials.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes annotated, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903537 John R. Hale
Commissioner
Credit Union Department

Effective date: May 9, 1989

Proposal publication date: February 7, 1989

For further information, please call: (512) 937-9236

Investments

• 7 TAC §91.802

The Credit Union Commission adopts an amendment to §91.802, with changes to the proposed text as published in the March 3, 1989, issue of the *Texas Register* (14 TexReg 1073). Mortgage related securities, subsection (c)(13), as an investment, was changed to add an exception in which a credit union could not invest; however, this change was not considered to be significant.

The amendment will permit credit unions to

make investments in highly rated mortgage and asset-backed securities; thereby, providing more latitude in their investment programs and creating more diverse investment portfolios without additional risks.

Credit unions will be authorized to invest in mortgage related securities as defined in United States Code Annotated, Title 15, §78c(a)(41), and asset-backed securities having an AA or better rating by Standard and Poor's or an equivalent rating by another nationally recognized rating agency. Investments in these securities can be made using the credit union's normal investment procedures.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes annotated, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.802. Other Investments.

(a) (No change.)

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

(1)-(12) (No change.)

(13) Mortgage related security—A security which meets the definition of mortgage related security in United States Code Annotated, Title 15, §78c(a) (41).

(14) Asset-backed security—A bond, note, or other obligation issued by a financial institution, trust, insurance company, or other corporation secured by either a pool of loans, extensions of credit which are unsecured or secured by personal property, or a pool of personal property leases.

(c) Authorized activities.

(1)-(12) (No change.)

(13) Mortgage related securities. A credit union may invest in mortgage related securities, except not in the "accrual bond" (or Z-bonds) or the residual interest of such mortgage related security.

(14) Asset-backed securities. A credit union may invest in asset-backed securities rated AA or better by Standard and Poor's or having an equivalent rating from another nationally recognized rating agency.

(d) (No change.)

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903538 John R. Hale
Commissioner
Credit Union Department

Effective date: May 9, 1989

Proposal publication date: March 3, 1989

For further information, please call: (512) 937-9236

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter F. Bills of Lading and Waybills

• 16 TAC §5.91, §5.93

The Railroad Commission of Texas adopts amendments to §5.91 and §5.93, without changes to the proposed text as published in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1159).

The amendments are adopted to eliminate carrier documents that contain repetitious information.

The amendments would allow motor carriers to issue a Uniform Hazardous Waste Manifest in lieu of a bill of lading or waybill for movements of materials required to be transported under such a manifest.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorizes the commission to regulate motor carriers in all matters.

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

Issued in Austin, Texas, on April 7, 1989.

TRD-8903527 Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: May 9, 1989

Proposal publication date: March 10, 1989

For further information, please call: (512) 463-7152

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Chronically Ill and Disabled Children's Services

• 25 TAC §37.90

The Texas Department of Health adopts an amendment to §37.90 with changes to the proposed text as published in the January 27, 1989, issue of the *Texas Register* (14

TexReg 554).

The amendment expands the criteria and procedures for approving ambulatory surgical care facilities to include specific pediatric guidelines.

No comments were received regarding adoption of the amendment; however, the Board of Health added a requirement to §37.90(3)(A) that freestanding ambulatory surgical care facilities must apply risk management principles to all patient care.

The amendment is adopted under Texas Civil Statutes, Article 4419c, §8, which provides the Texas Board of Health with the authority to adopt rules concerning the Chronically Ill and Disabled Children's Services; and Article 4414b, §1.05, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§37.90. Approved Providers and Facilities. All approved providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients on the basis of insurance or Medicaid status. The following groups of providers must be processed through an application process to determine their desire to participate within the program's rules as approved by the board and to determine their qualifications in relation to the criteria for participation as decided by the board.

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

(3) Ambulatory surgical care (ASC) facilities.

(A) Ambulatory surgery services may be utilized by the program as a cost efficient means as long as quality of care is assured. Any hospital approved for program participation whose Joint Committee on Accreditation of Health Care Organizations accreditation includes Hospital-Sponsored Ambulatory Care Services may be utilized for ambulatory surgery. However, freestanding facilities, even if governed or affiliated with an approved hospital, must apply for program approval. The program may contract with a limited number of facilities to assure program cost containment. For approval to participate in the CIDC Program, a freestanding ambulatory surgical care facility must meet the following criteria.

(i) State licensure requirements. Facilities must meet state licensure requirements in accordance with ambulatory surgical centers in accordance with §§135.1-135.27 of this title (relating to Purpose and Scope; Definitions; Fees; Governance of a Licensed ASC; Rights of Patients in a Licensed ASC; Administration of a Licensed ASC; Quality of Care in a Licensed ASC; Quality Assurance in a Licensed ASC; Medical Records in a Licensed ASC; Facilities and Environment in

a Licensed ASC; Anesthesia and Surgical Services in a Licensed ASC; Pharmaceutical Services in a Licensed ASC; Pathology and Medical Laboratory Services in a Licensed ASC; Radiology Services in a Licensed ASC; Nursing Services in a Licensed ASC; Teaching and Publication Activities in a Licensed ASC; Research Activities in a Licensed ASC; Unlicensed Ambulatory Surgical Center; Exemptions; Application and Issuance of License for Initial Applicants; Inspections; Renewal of Annual License; Conditions of Annual License; License Denial, Suspension, or Revocation; Complaints; Reporting of Incidents; Confidentiality).

(ii) Medicare certification. Facilities must meet Medicare standards in accordance with Part II, Department of Health and Human Services, Health Care Financing Administration, 42 CFR Parts 405 and 416, relating to Medicare Program; Ambulatory Surgical Services, published in the Federal Register, Volume 7, Number 151, August 5, 1982.

(iii) Pediatric equipment. Pediatric facilities must have available all necessary pediatric equipment including operating room, surgical tools, resuscitation apparatus, pharmaceutical services, beds, and other supplies that are appropriate for children.

(iv) Staff requirements. Staff must be as follows.

(I) CIDC approved surgical staff must perform the surgical procedures.

(II) A board certified anesthesiologist must be in the operating room and present for the induction of anesthesia and at the time of completion of anesthesia, on the premises (immediately available) at the time of surgical procedure and until the patient leaves the facility.

(III) An R.N. with documented clinical pediatric experience must be on the premises at all times while the patient is in the facility.

(v) Risk management principles. The facility must apply risk management principles to all patient care.

(vi) Patient transfer. The facility must have patient transfer agreements with CIDC approved hospitals in the area.

(B) Centers are required to submit documentation of the criteria, as set out in subparagraph (A)(i)-(v) of this paragraph, in writing to the CIDC Bureau through an application process in accordance with subparagraph (D) of this paragraph.

(C) CIDC reimbursement for care at freestanding ambulatory surgical care facilities will be limited to:

(i) children 24 months of age or older; and

(ii) surgical procedures designated as ASA (American Society of Anesthesiologists) Level I and II.

(D) Application procedures will be as follows.

(i) Applications will be reviewed by the program to assure that:

(I) all parts of the application form have been completed including a signature and date;

(II) all of the criteria for program participation have been met; and

(III) copies of documents have been provided verifying facility state licensure, Medicare certification, and patient transfer agreements with CIDC approved hospitals.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The application may be resubmitted with required documentation for reconsideration.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any ambulatory surgical care facility who disagrees with the result of the program's review, may appeal the decision through one of the following processes:

(I) administrative review; or

(II) review by the program's General Advisory Committee; and/or

(III) a due process hearing in accordance with the requirements of §37.96 of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(E) In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved ambulatory surgical care facilities at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given

the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, state comptroller's vendor identification number, and current administrator;

(II) current listing of program approved medical staff;

(III) current listing of qualified staff or facilities available; and

(IV) current Medicare certification status.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

(4)-(7) (No change.)

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

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

TRD-8903430 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: May 8, 1989.

Proposal publication date: January 27, 1989.

For further information, please call: (512) 458-7355

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 401. System Administration

Subchapter B. Interagency Agreements

• 25 TAC §401.47, §401.49

The Texas Department of Mental Health and Mental Retardation (TDMHMR), adopts new §401.47, without changes to the proposed text as published in the November 4, 1988, issue of the *Texas Register* (13 TexReg 5537), and also adopts §401.49, without changes to the proposed text as published in

the February 7, 1989, issue of the *Texas Register* (14 TexReg 679).

Section 401.47, concerning memorandum of understanding: continuity of care of mentally ill and mentally retarded offenders, is adopted pursuant to Senate Bill 245 of the 70th Texas Legislature, which requires specified state agencies to adopt by rule memoranda of understanding that describe their respective responsibilities for continuity of care for designated inmates. Section 401.49, concerning memorandum of understanding: community resource coordination groups for youth, is adopted pursuant to Senate Bill 298 of the 70th Texas Legislature, which requires TDMHMR to adopt by rule a joint memorandum to establish a system that ensures coordination of services between agencies for multiproblem children and youth.

No comments were received regarding adoption of the new sections.

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

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

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

TRD-8903476 Pattilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: May 8, 1989

Proposal publication date: November 4, 1988

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

Subchapter H. Designation as Single Portal Authority

• 25 TAC §401.504

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts an amendment to §401.504, without changes to the proposed text as published in the February 10, 1989, issue of the *Texas Register* (14 TexReg 741).

The amendment stipulates that the duration of designation as a single portal authority by TDMHMR in fiscal year 1989 be through August 31, 1989, and that designations after that be for a two-year period. The amendment is required to implement the single portal authority program, which facilitates the delivery of services to involuntarily committed mental health clients in their local communities.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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

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

TRD-8903477 Pattilou Dawkins
Chairman
Texas Board of Mental
Health and Mental
Retardation

Effective date: May 8, 1989

Proposal publication date: February 10, 1989

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

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Parks and Wildlife Department

Chapter 53. Finance

License Deputies

• 31 TAC §53.22, §53.23

The Texas Parks and Wildlife Commission adopts amendments to §53.22 and §53.23, without changes to the proposed text as published in the March 3, 1989, issue of the *Texas Register* (14 TexReg 1074).

The amendments will expedite the appointment of license deputies and thus assure the availability of hunting and fishing licenses to the public.

The Parks and Wildlife Department will mail all required forms to anyone who is interested in selling licenses to the public and as soon as the application and agreement forms and a public official bond or letter of credit are properly executed and returned, licenses will be provided for sale to the public.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the authority of the Texas Parks and Wildlife Code, §§12.001(b), 42.011, 46.009, 46.010, and 46.011, which provides the Texas Parks and Wildlife Department with the authority to appoint license deputies as agents of the department to issue hunting and fishing licenses to the public.

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903555 Boyd M. Johnson
General Counsel
Texas Parks and Wildlife
Department

Effective date: September 1, 1989

Proposal publication date: March 3, 1989

For further information, please call: (512) 389-4805

Part IX. Texas Water Commission

Chapter 321. Control of Certain Activities by Rule

Subchapter G. Hydrostatic Test Discharges

• 31 TAC §§321.101-221.109

The Texas Water Commission (TWC) adopts new §§321.101-321.109, Subchapter G, with changes to the proposed text as published in the December 27, 1988, issue of the *Texas Register* (13 TexReg 6448).

The new sections are necessary to eliminate unreasonable delays for persons installing new facilities or replacing existing facilities which hold or carry raw materials or products and who must perform hydrostatic tests prior to operation of the facilities. The new sections will allow persons to discharge hydrostatic test water which meets a minimum specified effluent quality without an individual permit. The person desiring to discharge must submit a registration form to the executive director of the TWC prior to discharge and then may initiate the discharge in accordance with the conditions specified in the rule without reply from the agency. The discharger is required to sample the discharge, analyze the water and report the data to the executive director.

The TWC received comments in favor of the proposed sections from Chevron U.S. A. Inc. (Chevron), Texas Mid-Continent Oil & Gas Association (TMOGA), and T U Services. The following text is a discussion of the comments and the agency's response. T U Services stated that referring to a one-time discharge in the definition of hydrostatic test discharges was unnecessary because they are practically, infrequent and nonroutine. We believe that the term "one-time" is not critical to the definition and are deleting the phrase in both §321.101 and §321.102.

TMOGA commented that §321.102(b) should be modified to exempt from this chapter and other permitting requirements discharges which are not into or adjacent to, or reasonably be expected to enter or effect any water in the state and small discharges of less than 10 barrels in volume which do not contain chemical additives. TWC is amending the rule to state that this subchapter and other permitting requirements are not applicable to discharges which are not into, are adjacent to, water in the state nor discharges from facilities regulated by the Railroad Commission of Texas. We do not agree that an exemption from the rule based on volume is appropriate; however, we are maintaining the exemption from registration requirements for discharges from new facilities where the test waters do not contain chemical additives.

Both TMOGA and Chevron commented that there should be no differentiation between a discharger owned wastewater treatment facility and that owned by someone else who is capable of treating the hydrostatic test water. Additionally, they pointed out the possibility of publicly owned treatment works (POTW) accepting this type of wastewater. The agency agrees and has deleted the discharger-owned phrase in §321.104(a)(1) and has substituted POTW for commercial disposal facility in §321.104(a)(2). TMOGA also

commented in this section that discharges from reconditioned, and facilities formerly in gaseous product service should be exempted from registration requirements. The agency believes that facilities holding or carrying some types of gaseous products would not contribute harmful material to hydrostatic test waters and have added §321.104(a)(4), which exempts from registration requirements discharges of test water from facilities formerly containing only elemental gases (eg. hydrogen, oxygen, nitrogen, etc.).

T U Services commented that the proposed rule is not clear that after notification to the executive director, a response from the agency is not required to initiate the discharge of hydrostatic test waters. Section 321.105 has been reworded to clarify the responsibility of the discharger.

Chevron, TMOGA, and T U Services discussed §321.107 concerning sample and analysis requirements. Specifically, §321.107(2)(C), (D), and (E) were not clear. The agency has reworded these sections to clarify that two grab samples should be taken, one in the first hour of discharge and one in the final hour of discharge, for analysis of chemical oxygen demand or total organic carbon and the maximum concentration reported. Grab samples for oil and grease shall be collected during the first and last hour of discharge also. Grab samples for pH analysis shall be collected once each day of discharge and shall be reported as required in the section entitled reporting. In §321.107(2)(G), a reference to microbiological analyses occurs within the text discussing chemical and physical analysis. We have left the sentence as published to be consistent with other rules which discuss sampling requirements even though these types of analyses are not required by this subchapter. The chart located in §321.107(3) has been modified to reflect grab samples for each parameter.

Chevron requested that the rule allow discharge of hydrostatic test water to groundwater by percolation. The agency does not believe that discharges to groundwater should be allowed without specific review of the individual proposed project. Surface water and groundwater do not have the same capabilities to assimilate chemicals and we feel that we cannot adequately address this type of discharge by rule. Review of discharges to the groundwater is currently regulated under Title 31.

Because of comments and the agency's desire to adopt a rule that clearly states each requirement, we have made an additional minor modification as follows: delete the definition for composite sample since all samples are grabs and specify that discharges regulated by this rule are those into or adjacent to water in the state.

The new sections are adopted under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide the commission with the authority to promulgate rules as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state and to establish and approve all general policies of the commission.

§321.101. Definitions. The following words and terms when used in this subchapter, shall have the following mean-

ings, unless the context clearly indicates otherwise.

Clean-up wastes—Liquid and solid wastes generated during initial clean-up of used facilities. This includes facility draining, flushing, purging, and chemical and mechanical cleaning wastes.

Discharge—Deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

Facilities—Pipelines, tanks, and other vessels used in pipeline transportation, storage, or otherwise containment of raw materials or products.

Grab sample—An individual sample collected in less than 15 minutes.

Hydrostatic test discharges—Discharge into or adjacent to any water in the state of test water that is made following pressure testing of facilities.

New facilities—Facilities which have not previously contained raw materials or products.

TWC—Texas Water Commission.

Used facilities—Facilities which have been used to store, transport, or otherwise contain a liquid or gaseous raw material or product.

Water in the state—Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

§321.102. Applicability.

(a) The purpose of this subchapter is to regulate by rule the discharges into or adjacent to water in the state of hydrostatic test water from facilities.

(b) This subchapter and other permitting requirements are not applicable to:

(1) discharges which are not into or adjacent to water in the state; and

(2) discharge into or adjacent to water in the state of hydrostatic test water from natural gas and crude oil facilities which are regulated by the Railroad Commission of Texas.

(c) This subchapter does not authorize the use of surface water for conducting the hydrostatic test. A separate application for temporary water use shall be submitted, as necessary, to the Texas Water Commission.

(d) For discharges into an adjacent to water in the state located in or within 10 stream miles upstream of the Edwards Aquifer recharge zone as defined in Chapter 313 of this title (relating to Edwards Aquifer)

fer), separate authorization may be required.

§321.103. New Facilities.

(e) Registration not required.

(1) The test waters may be discharged into or adjacent to water in the state from new facilities without registration provided the following conditions are met:

(A) water used for the hydrostatic test as a minimum is of dischargeable quality as defined by §321.107(3) of this title (relating to Effluent Limitations);

(B) water used for the hydrostatic test does not contain corrosion inhibitors, antifreeze compounds, or other chemical additives;

(C) the discharge is controlled at a rate to prevent flooding and/or erosion of the discharge area; and

(D) the discharge does not cause any nuisance conditions to adjacent land owners along the discharge route.

(2) Individual hydrostatic test discharge registration is not required for new facilities if test waters are disposed of in accordance with §321.104(a) of this title (relating to Used Facilities).

(b) Registration required. Individual hydrostatic test discharge registration is required for new facilities that do not meet the conditions of subsection (a) of this section and shall be regulated by the requirements in §§321.105-321.107 of this title (relating to Registration; General Requirements for Discharges; and Specific Requirements for Discharges).

§321.104. Used Facilities.

(a) Registration not required. Individual hydrostatic test discharge registration for used facilities is not required under the following provisions:

(1) hydrostatic test water is collected and/or transported to a wastewater treatment system that is permitted by the Texas Water Commission. The hydrostatic test water must be similar to other wastes treated in the treatment system and not likely to cause a permit violation;

(2) hydrostatic test water is collected and/or transported to a publicly owned treatment works permitted by the Texas Water Commission;

(3) hydrostatic test water is collected and/or transported to a disposal well that is permitted by the Texas Water Commission to receive such wastes; or

(4) hydrostatic test water which is discharged from facilities which formerly contained only elemental gases (eg. hydro-

gen, oxygen, nitrogen, etc.) provided the requirements of §321.103(a)(1)(A)-(D) of this title (relating to New Facilities.)

(b) Registration required. Unless exempted by subsection (a) of this section, individual hydrostatic test registration is required for all discharges from used facilities and shall be regulated by the requirements in §§321.105-321.107 of this title (relating to Registration; General Requirements for Discharge; and Specific Requirements for Discharges).

§321.105. Registration.

(a) Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), a registration form as provided by the executive director must be submitted to the TWC Austin Office prior to a discharge into or adjacent to water in the state. Submittal of the registration form is sufficient notice to initiate discharge in accordance with this subchapter.

(b) In the event of an emergency repair/replacement, a registration form may be submitted within five days after discharge.

§321.106. General Requirements for Discharges. Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), the following general requirements apply:

(1) the discharger shall notify the appropriate TWC district office by telephone at least two days prior to discharge. For emergency facility repair or replacement, the discharger shall notify the appropriate TWC district office by telephone as soon as possible;

(2) the discharge shall not cause any nuisance conditions to adjacent landowners along the discharge route;

(3) the discharger shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TWC District Office that the discharge is presenting a hazard to the uses of the receiving water, the discharger shall terminate such discharge. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the TWC Austin and appropriate district office as soon as possible, but no later than 24 hours following their discovery. A written report shall be submitted to the TWC Austin and district offices within five working days. The report shall contain a description of the location; the exact date and time the problem was first identified; the potential danger to human health or safety, or the environment; the immediate steps that were taken

to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the reoccurrence of similar problems during other hydrostatic test discharges. The discharge of hydrostatic test water shall not be acutely toxic to aquatic life;

(4) concentration of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state;

(5) any earthen pits or surface impoundments used in conjunction with the disposal of hydrostatic test water shall be properly designed and constructed to prevent percolation and to protect groundwater in the state; and

(6) disposal of solid wastes including cleanup wastes shall be in accordance with the Solid Waste Disposal Act, Article 4477-7.

§321.107. Specific Requirements for Discharges. Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), the following specific requirements apply.

(1) Point of discharge.

(A) The discharge shall be to a splash pad to aerate the hydrostatic test water.

(B) All hydrostatic test water shall be discharged through a filter media, such as hay bales, for filtering of suspended solids. The filter media shall be properly located and anchored to prevent bypassing.

(C) The rate of discharge shall be controlled to prevent flooding and erosion.

(2) Monitoring.

(A) The discharger shall maintain authorized personnel at the site at all times to monitor and sample the discharge.

(B) Grab samples shall be collected in wide mouth, clear jars every two hours during the discharge and inspected for the appearance of oil and grease or the detection of a chemical odor. The discharge shall cease immediately if contamination is evident and the appropriate TWC district office shall be notified within 24 hours. The remaining test water shall be evaluated for additional treatment or alternate means of disposal.

(C) At least two grab samples for analysis shall be collected during the discharge. The initial grab sample shall be collected within the first hour of discharge, and the final grab sample shall be collected during the last hour of discharge. Individual samples shall be analyzed for chemical oxygen demand or total organic carbon, and the maximum concentration reported as required in paragraph (4) of this section. The sampling point shall be downstream of the filter media, or following any other treatment unit that may be utilized.

(D) Grab samples for oil and grease analysis shall be collected during the first and last hours of the discharge. Each sample shall be analyzed separately and the maximum oil and grease concentration reported as required in paragraph (4) of this section. The sampling point shall be down-

stream of the filter media, or following any other treatment unit that may be utilized.

(E) Grab samples for pH analysis shall be collected once each day of discharge and reported as required in paragraph (4) of this section. The sample point shall be downstream of the filter, or following any other treatment unit that may be utilized.

(F) All sample collection shall be conducted according to recommendations found in the latest edition of *Standard Methods for the Examination of Water and Wastewater* (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or Environmental Protection Agency, *Methods for Chemical Analysis of Water and Wastes* (1979), or Environmental

Protection Agency, *Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents* (1973).

(G) Sample containers, holding times, preservation methods, and the physical, chemical, and microbiological analyses of effluents shall meet the requirements specified in regulations published in 40 Code of Federal Regulations Part 136, pursuant to the Federal Water Pollution Control Act, §304(g), and be conducted according to this federal regulation or the latest edition of *Standard Methods for the Examination of Water and Wastewater*.

(3) Effluent Limitations.

(A) The following daily maximum effluent limitations apply to all discharges of hydrostatic test water:

<u>Parameter</u>	<u>Daily Maximum Limitation</u>	<u>Sample Type</u>
Chemical Oxygen Demand*	250 mg/l	Grab
Total Organic Carbon*	85 mg/l	Grab
Oil and Grease	15 mg/l	Grab

* Analyze and report either Chemical Oxygen Demand or Total Organic Carbon

(B) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units.

(C) There shall be no discharge of floating solids or visible foam other than in trace amounts, and no discharge of visible oil.

(4) Reporting. All analytical results shall be reported to the TWC Austin Office on the "Hydrostatic Test Report" form provided by the executive director. All violations of effluent limitations shall be noted on the form and plans discussed to prevent similar violations during other hydrostatic test discharges. Results shall be submitted to the commission within 25 days after termination of the discharge.

§321.108. *Restrictions.* This subchapter does not convey property rights of any sort and does not grant any exclusive privilege.

§321.109. *Enforcement.* If a discharger fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the

Texas Water Code, and the rules of the commission.

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903534

Jim Haley
Director, Legal Division
Texas Water Commission

Effective date: May 9, 1989

Proposal publication date: December 27, 1988

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



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services
Chapter 48. Community Care Aged and Disabled

Case Management

• 40 TAC §48.3904

The Texas Department of Human Services adopts an amendment to §48.3904, without changes to the proposed text as published in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1269).

The amendment is justified because the department will be able to contract with more experienced, tenured providers who offer adult foster care services.

The amendment will function by increasing the adult foster care unit rate from \$8.35 to \$9.27.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the

authority to administer public and medical assistance programs.

Issued in Austin, Texas, on April 18, 1989.

TRD-8903562

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Effective date: May 15, 1989.

Proposal publication date: March 10, 1989.

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



Chapter 50. Day Activity and Health Services

Provider Eligibility

• 40 TAC §50.2902

The Texas Department of Human Services adopts an amendment to §50.2902, without changes to the proposed text as published in the March 10, 1989, issue of the *Texas Register* (14 TexReg 1269).

The amendment is justified because more day activity and health services facilities will be able to remain in operation and continue providing services to the department's clients.

The amendment will function by increasing the day activity and health services unit rate from \$9.70 to \$10.40.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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

Issued in Austin, Texas, on April 18, 1989.

TRD-8903563

Charles Stevenson
Acting Commissioner
Texas Department of
Human Services

Effective date: May 15, 1989.

Proposal publication date: March 10, 1989.

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



State Board of Insurance Exempt Filing

Notifications Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has adopted amendments to the *Texas Automobile Manual*.

The board has adopted adjusted physical damage rating symbols for certain 1988 and 1987 model private passenger automobiles. The symbols were developed from manufacturers list price data and adjusted in accordance with the prescribed Vehicle Series Rating Rule contained in the symbol and identification section of the *Texas Automobile*

Manual. The amendments are effective at 12:01 a.m. on the 15th-day after notice of this action is published in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas on April 7, 1989.

TRD-8903508

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: May 11, 1989

For further information, please call: (512) 463-6327



The State Board of Insurance has considered a filing by the Insurance Services Office, Inc. proposing a revision to the Texas Territory Page to display Cameron County as Territory 007 for Division Six of the *Commercial Lines Manual*.

The revision is approved to become effective September 1, 1989, under the following rule of application. The changes are applicable to all policies effective on or after September 1, 1989. No policy effective prior to September 1, 1989, shall be endorsed or cancelled and rewritten to take advantage of or to avoid the application of these changes except at the request of the insured and using the cancellation procedures applying on the date of such request.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas on April 14, 1989.

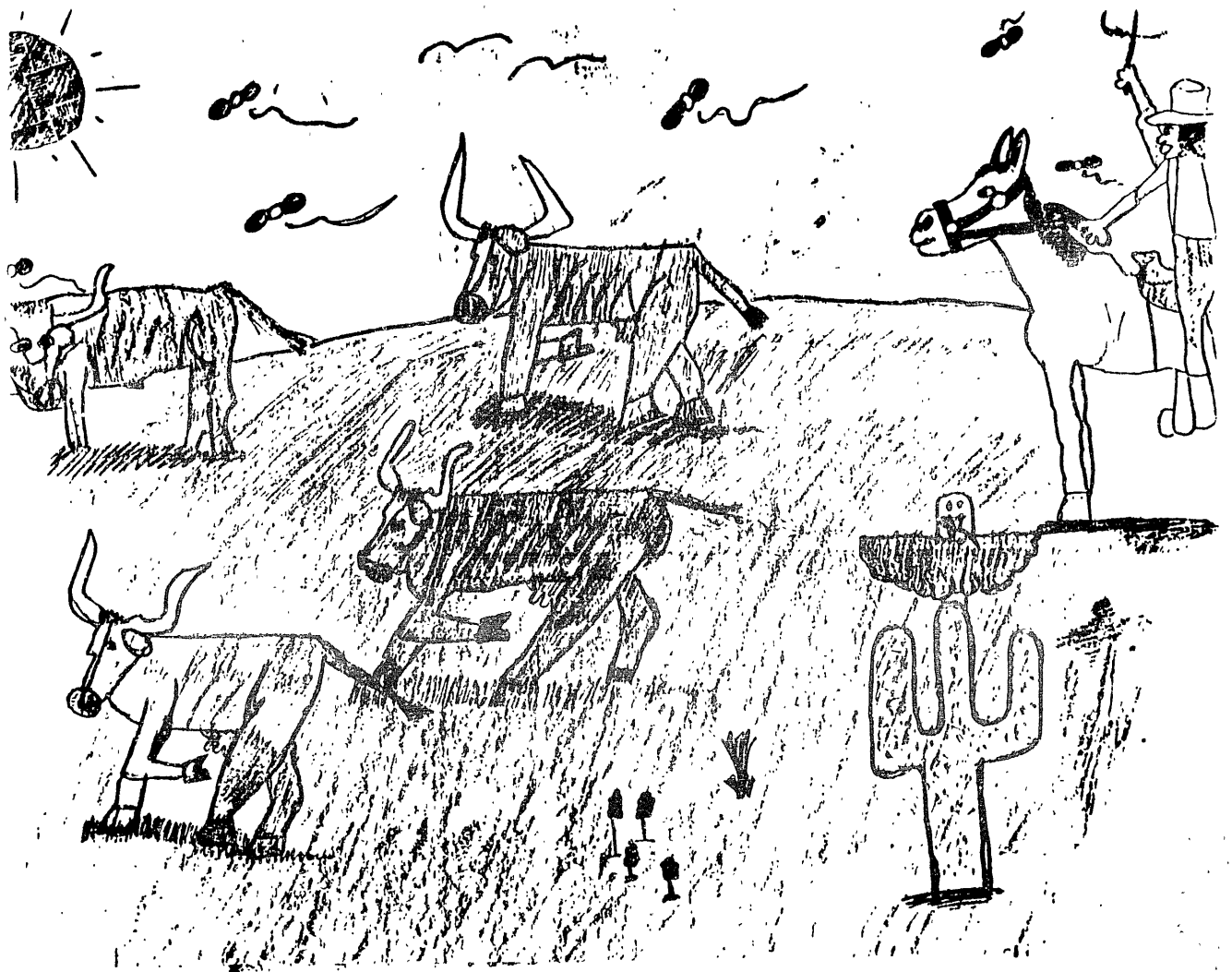
TRD-8903509

Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: September 1, 1989

For further information, please call: (512) 463-6327





Name: Kim Koether

Grade: 5

School: Sweeny Elementary, Sweeny

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

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

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

State Banking Board

Wednesday, April 26, 1989, 9:30 a.m. The State Banking Board will meet at 2601 North Lamar, Austin. According to the agenda summary, the board will approve previous minutes; consider interim charter applications; consider change of domicile applications; consider conversion applications; review application approved, but not yet open and other pending application; and the board may convene in executive session to discuss pending litigation.

Contact: William F. Aldridge, 2601 North Lamar, Austin, Texas 78705.

Filed: April 18, 1989, 2:09 p.m.

TRD-8903535

Texas Commission for the Blind

Wednesday, May 10, 1989, 3 p.m. The El Paso District Office of the Texas Commission for the Blind will meet in Suite 103, Odessa District Office Building A, 2817 Parkway, Odessa. According to the agenda, the office will hold a public forum for the purpose of giving local consumers an opportunity of speaking to agency staff about services to blind and visually disabled Texans and commenting on the agency's state plan. Consumers will also have the opportunity of participating in a question and answer period about local agency services.

Contact: Cecilia Berrios, P.O. Box 12866, Austin, Texas 78711, (512) 459-2611.

Filed: April 19, 1989, 3:42 p.m.

TRD-8903592

Texas State Board of Dental Examiners

Thursday-Saturday, May 4-6, 1989, 8 a.m. The Texas State Board of Dental Examiners will meet at the San Antonio Convention Center, 200 East Market Street, San Antonio. According to the agenda summary, the board will consider disciplinary

hearings; report of Dr. James Hill concerning peer assistance; miscellaneous matters; appearances by the public and profession; discussion of the need to direct the staff to prepare proposals to amend rules; consider adoption of rules 116.4 and 116.5 and 107.63; repeal of emergency rule 107.63; consider requests for board action; consider the reinstatement of Dr. Charles Rhyne's license; approval of applicants for anesthesia permits; review of form letters for anesthesia applicants; consider agreed settlements; cancellation of licenses for failure to register; retirement of current licensees; discussion of 1989 dental exam criteria and procedures; and discuss of 1989 hygiene exam criteria and procedures. The board will meet in executive session to discuss pending litigation.

Contact: Crockett Camp, 8317 Cross Park Drive, Suite 400, Austin, Texas, (512) 834-6021.

Filed: April 19, 1989, 2:11 p.m.

TRD-8903588

Texas Department of Health

Friday, April 21, 1989, 10 a.m. The Texas Emergency Medical Services Advisory Council (TEMSAC) of the Texas Department of Health met in emergency session at the Austin Hilton Inn, IH-35 and US 290, 6000 Middle Fiskville Road, Austin. According to the agenda summary, the council approved minutes of prior meeting and consider: chairperson's report; committee appointments; assignment of rules to committees; associate commissioner's report; bureau chief's report; EMS Division reports; committee reports (education, medical directors); messages to TEMSAC (legislative update, public comment, other). The emergency status was necessary because reasonably unforeseeable situation requiring immediate action by the council.

Contact: Gene Weatherall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7550.

Filed: April 19, 1989, 4:17 p.m.

TRD-8903593

Sunday, May 7, 1989, 9 a.m. The Texas Radiation Advisory Board of the Texas Department of Health will meet in the Conference Room, 1212 East Anderson Lane, Austin. According to the agenda summary, the board will approve minutes of prior meeting and discuss: chairman's report; update on Texas low-level radioactive waste disposal authority activities; committee reports (executive, medical, uranium, waste processing); rules and regulatory guide update; program activities (general, compliance and inspection, licensing/registration/standards); and set next meeting date and location.

Contact: L. Don Thurman, 1100 West 49th Street, Austin, Texas 78756, (512) 835-7000.

Filed: April 19, 1989, 4:17 p.m.

TRD-8903594

Texas Health and Human Services Coordinating Council

Wednesday, April 26, 1989, 9 a.m. The Children and Youth Services State Coordinating Committee of the Texas Health and Human Services Coordinating Council will meet in Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of the previous meeting; discuss formation of CASSP subcommittee-members; consider update on community resource coordination pilot project, legislation affecting the committee; discuss other legislation pertaining to children and youth issues; and consider old and new business.

Contact: Patricia O. Thomas, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 18, 1989, 4:49 p.m.

TRD-8903566

Texas Heroes Monument Commission

Friday, April 21, 1989, 9 a.m. The Texas Heroes Monument Commission met in

emergency session in the Caduceus Room, UTMB Administration Building, 301 University, Galveston. According to the agenda, the commission heard secretary's report and treasurer's report; discussed items; and set date and site of next meeting. The emergency status was necessary because of late filing.

Contact: Cindy Sullivan, 51 Colony Park Circle, Galveston, Texas 77551, (409) 744-5632.

Filed: April 14, 1989, 8:51 a.m.

TRD 8903573

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**State Department of
Highways and Public
Transportation**

Wednesday, April 26, 1989, 10 a.m. The State Highway and Public Transportation Commission for the State Department of Highways and Public Transportation will meet in Room 101-A, First Floor, Dewitt C. Greer State Highway Building, 11th and Brazos Streets, Austin. According to the agenda summary, the commission will execute contract awards and routine minute orders; consider presentations from previous public hearing dockets as necessary; and review staff reports relative to planning and construction programs and projects. The agenda is available in the second floor office of the minute clerk in the Dewitt C. Greer State Highway Building.

Contact: Lois Jean Turner, Room 203, 11th and Brazos Streets, Austin, Texas, (512) 463-8616.

Filed: April 18, 1989, 2:55 p.m.

TRD-8903547

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Texas Historical Commission

Thursday, April 27, 1989, 7:30 a.m. The Publications/Outreach Committee of the Texas Historical Commission will meet in emergency session in the Sheraton Hotel and Towers restaurant, 400 North Olive Street, Dallas. According to the agenda, the committee will consider recommendations for 1989 T. R. Fehrenbach publications contest, medallion update, and public outreach. The emergency status was necessary because committee was unable to schedule meeting prior to deadline.

Contact: Roni Morales, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: April 19, 1989, 12:34 p.m.

TRD-8903578

Thursday, April 27, 1989, 8:30 a.m. The National Register Programs Committee of the Texas Historical Commission will meet in emergency session in the Cafe Verde, Sheraton Dallas Hotel, 400 North Olive Street, Dallas. According to the agenda, the

committee will consider upcoming state board of review meetings for July 27 and 28 in Amarillo and September 29 and 30 in Austin (this meeting will mark the 20th anniversary of the first Texas listing in the National Register of Historic Places); consider contract awarded for updating the National Register Catalog, second annual certified local government conference; consider National Park Service landscape study for nominations: Big Bend National Park and Bastrop State Park; consider historic preservation fund update and American heritage trust legislation, Historic Contexts Advisory Committee recommendations on statewide contexts, National Park Service audit team at agency May 22-26, update on the Texas and Pacific depot in Marshall and other depot preservation projects; approve 1989 survey and planning grants; and hear quarterly report of activities. The emergency status was necessary because committee was unable to reconcile scheduling until the last moment.

Contact: Curtis Tunnell, P.O. Box 12276, Austin, Texas 78711, (512) 463-6100.

Filed: April 20, 1989, 8:49 a.m.

TRD-8903610

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University of Houston System

Wednesday, April 26, 1989, 8 a.m. The Board of Regents of the University of Houston System, will meet in the Zodiac Room, Conrad Hilton College Hotel, University of Houston, 4800 Calhoun, Houston. According to the agenda summary, the board will discuss and/or act upon the following: minutes, consulting policy, amendment to board policy 02.01, personnel recommendations, honorary degrees, promotion in academic rank, faculty emeriti appointments, alma mater, academic planning and engineering education, bachelor of science in applied physics, reaffirmation of contract, additional easement to HL&P, construction change orders, various auditing reports, fee changes, x-ray diffractometer and diffraction system, various agreements, bond counsel, equipment purchase, investment objectives, arrangement between UH and athletic association, wortham house guidelines, gift acceptance reports and consent docket.

Contact: Peggy Cervenka, 4600 Gulf Freeway, Suite 500, Houston, Texas 77023, (713) 749-7545.

Filed: April 20, 1989, 8:48 a.m.

TRD-8903611

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**Texas Department of Labor
and Standards**

Tuesday, May 16, 1989, 9 a.m. The Labor, Licensing, and Enforcement Division for the Texas Department of Labor and Stan-

dards will meet in Room 1012, 910 Colorado, E.O. Thompson Building, Austin. According to the agenda summary, the division will reconvene hearing regarding claims for unused or unearned portions of fees concerning Dyna Fit, Inc., doing business as Dynafit Athletic Club, 9700 North Lamar, Austin, location. If the hearing is not concluded on the day it commences, the hearing will continue at the same place on each subsequent working day until concluded, to the extent possible.

Contact: Mary Bailey, 920 Colorado, E.O. Thompson Building, Austin, Texas, (512) 463-9940.

Filed: April 18, 1989, 2:11 p.m.

TRD-8903561

Thursday, May 18, 1989, 9 a.m. The Manufactured Housing Division for the Texas Department of Labor and Standards will meet in Room 105, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division will consider suspension, revocation, denial, or a civil penalty of respondent's, welcome homes, license/registration for violation of the department's manufactured housing rules and regulations.

Contact: Jack Shriver, 920 Colorado, Austin, Texas, (512) 463-3127.

Filed: April 18, 1989, 2:12 p.m.

TRD-8903560

Wednesday, May 24, 1989, 9 a.m. The Labor, Licensing, and Enforcement Division for the Texas Department of Labor and Standards met in Room 1012, E.O. Thompson Building, 920 Colorado, Austin. According to the agenda summary, the division will consider suspension, revocation, denial, or a civil penalty of respondent's, Charles Saunders, license/registration for violation of the department's auctioneering rules and regulations.

Contact: Elvis G. Schultze, 920 Colorado, Austin, Texas 78711, (512) 463-3127.

Filed: April 17, 1989, 2:12 p.m.

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**Texas State Board of
Physical Therapy
Examiners**

Thursday, May 4, 1989, 9 a.m. The Texas State Board of Physical Therapy Examiners will meet in the Briar Park Room, Adams Mark Hotel, 2900 Briarpark Drive at Westheimer, Houston. According to the agenda summary, the board will review minutes of the January 29, 1989, meeting; rule amendment; committee reports; special requests; miscellaneous business; and meet in executive session to discuss board personnel.

Contact: Lois M. Smith, Suite 113, 313 East Rundberg, Austin, Texas 78753, (512) 835-1846.

Filed: April 13, 1989, 2:05 p.m.

TRD-89033557

Texas Department of Public Safety

Thursday, April 27, 1989, 10 a.m. The Public Safety Commission for the Texas Department of Public Safety will meet in the Commission Room, TSPS Headquarters, 5805 North Lamar, Austin. According to the agenda summary, the commission will approve minutes; budget matters; personnel matters; real estate matters; and pending and contemplated litigation; miscellaneous and other unfinished business.

Contact: Joe E. Milner, 5805 North Lamar, Austin, Texas, (512) 463-2000, ext. 3700.

Filed: April 18, 1989, 2:51 p.m.

TRD-8903546

Public Utility Commission of Texas

Wednesday, April 26, 1989, 9 a.m. The Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider Docket 8363-Application of El Paso Electric Company for authority to change rates, and Docket 8429-Application of Southwestern Electric Power Company for a certificate of convenience and necessity for proposed transmission line within Glass County. In addition, the commission will consider initial discussion regarding scheduling CAuse 430,341 Texas Industrial Energy Consumers et al v. PUC (Docket 6992).

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 18, 1989, 3:16 p.m.

TRD-8903549

Monday, May 1, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin, rescheduled from Monday, April 24, 1989, at 10 a.m. According to the agenda summary, the commission will consider Dockets 6925 and 7029-Applications of Contel Corporation to purchase stock of Colmesneil Telephone Company, Inc. and of Continental Telephone Company of Texas for merger of Colmesneil Telephone Company, Inc. into Continental Telephone Company of Texas.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 18, 1989, 3:16 p.m.

TRD-8903550

Tuesday, May 2, 1989, 10 a.m. The Hear-

ings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider Docket 8667-Application of Alenco Communications, Inc. to amend certificate of convenience and necessity within Webb County.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 18, 1989, 3:16 p.m.

TRD-8903551

Tuesday, May 2, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission will consider Docket 8684-Application of Southwestern Bell Telephone Company to amend certificate of convenience and necessity within Webb County.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 18, 1989, 3:16 p.m.

TRD-8903551

State Committee of Examiners for Speech-Language Pathology and Audiology

Friday, May 5, 1989, 9 a.m. The State Committee of Examiners for Speech-Language Pathology and Audiology will meet in Conference Room T-507, 1100 West 49th Street, Austin. According to the agenda summary, the committee will approve minutes of prior meeting and discuss (with possible action); complaints and complaint investigations; new forms and form letters; license verification card; data processing support; subscription to "The Law of Professional Licensing and Certification Quarterly"; annual CLEAR national conference; termination of title, "certified hearing aid audiologist"; legislation; Texas Hearing Aid Association petition for rule change; processing applications and licenses to comply with House Bill 5; continuing education; complaint procedure; inactive status of licensees; emergency reactivation of licensees; changes to rules; executive secretary's report; and other matters requiring no committee action.

Contact: June Robertson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7502.

Filed: April 19, 1989, 4:17 p.m.

TRD-8903595

University of North Texas

Saturday, April 22, 1989, 8 a.m. The Board of Regents for the University of North Texas met at Gladon's Ranch, Athens. According to the agenda, the board met in executive session to discuss personnel; evaluation and assessment of duties of specific university officers; real estate: purchase, exchange, lease, and value of real property as it relates to future growth of the campus; employee briefing; legislative update; and met in open meeting to review controversial agenda.

Contact: Jan Hobbs, P.O. Box 13737, Denton, Texas 76203.

Filed: April 13, 1989, 2:07 p.m.

TRD-8903558

University of Texas Health Science Center at Houston

Wednesday, April 26, 1989, 2 p.m. The Animal Welfare Committee, Medical School of the University of Texas Health Science Center at Houston will meet in Conference Room G.018, Medical School Building, Houston. According to the agenda summary, the committee will observe presentation of protocols by protocol review group; hear subcommittee reports concerning animal care facilities, program update, and community affairs; and discuss USDA proposed regulations and Open Meetings Act and Open Records Act.

Contact: Kathleen M. Rose, P.O. Box 20708, Houston, Texas 77225, (713) 792-5895.

Filed: April 19, 1989, 10:16 a.m.

TRD-8903575

The University of Texas at Austin

Monday, April 24, 1989, 2 p.m. The Intercollegiate Athletics for Men of the University of Texas at Austin met in Bellmont Hall Conference Room 606, U.T. Campus, 21st and San Jacinto Streets, Austin. According to the agenda summary, the intercollegiate athletics for women called order; approved minutes of the previous meeting; heard announcement/information reports; discussed old and new business.

Contact: Donna Lopiano, BEL 606, U.T. Campus, Austin, Texas, (512) 471-7693.

Filed: April 18, 1989, 2:50 p.m.

TRD-8903545

Texas Water Commission

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building,

Austin. Dates, times, and agendas follow.

Monday, April 24, 1989, 10 a.m. The commission met in emergency session to consider various matters within the regulatory jurisdiction of the commission. In addition, the commission considered items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status is needed in order to avoid litigation by the contractor and bonding company.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: April 18, 1989, 1:35 p.m.

TRD-8903556

Monday, May 1, 1989, 10 a.m. The commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time. The emergency status is needed in order to avoid litigation by the contractor and bonding company.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas 78711, (512) 475-2161.

Filed: April 18, 1989, 1:35 p.m.

TRD-8903539

Monday, May 8, 1989, 2 p.m. The commission will consider creation of Point Venture II municipal utility district of Travis County, containing approximately 589.771 acres of land.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 19, 1989, 4:22 p.m.

TRD-8903607

Monday, May 8, 1989, 2 p.m. The commission will consider creation of Galveston County municipal utility district 29 containing approximately 294.26 acres of land in Galveston County.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 19, 1989, 4:21 p.m.

TRD-8903608

Monday, May 11, 1989, 10 a.m. The Office of Hearings Examiner will meet in the Third Floor Conference Room, Henderson County Courthouse Annex, Athens. Ac-

ording to the agenda summary, the office will consider Docket 7779-R-Rate increase of Clear Creek Water Company, Inc.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:20 p.m.

TRD-8903600

Monday, May 15, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Dockets 7877-R and 7967-Q-Rate increase and request to terminate service of Brune Pump Company doing business as China Spring Water Supply.

Contact: Angela Demerle, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:20 p.m.

TRD-8903599

Monday, May 15, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 1149A, to consider Docket 78960-C-Application for an amendment to water certificate of convenience and necessity for Wichita Valley Water Supply Corporation.

Contact: April 19, 1989, 4:20 p.m.

TRD-8903602

Monday, May 22, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Docket 7964-G-Lakeshore Utility Company, Inc.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:21 p.m.

TRD-8903603

Monday, May 22, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 1149A, to consider Docket 7963-G-Rate increase of Highland Shores Utilities Company.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:21 p.m.

TRD-8903604

Friday, May 26, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 1028A, to consider Docket 7876-R-Paul Brune doing business as Rivercrest Water Supply Company.

Contact: Jim Murphy, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:20 p.m.

TRD-8903598

Friday, May 26, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Docket 7934-C-Application for a water certificate of convenience and necessity of City of Palestine.

Contact: Sally Colbert, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:20 p.m.

TRD-8903601

Friday, June 2, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 512, to consider Docket 7895-G-Application by Moses Water Company for consideration of a rate increase.

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:19 p.m.

TRD-8903597

Monday, June 5, 1989, 10 a.m. The Office of Hearings Examiner will meet in Room 1149A, to consider Docket 7866-S-Transfer of a water certificate of convenience and necessity by Rayburn Country Municipal Utility District.

Contact: Mary Sals, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 19, 1989, 4:21 p.m.

TRD-8903606

Monday, June 5, 1989, 2 p.m. The commission will consider petition for creation of Harris County municipal utility district 350 comprising of 431.174 acres in Harris County.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 19, 1989, 4:16 p.m.

TRD-8903596

Monday, June 12, 1989, 10 a.m. The commission will consider notice of application by Clarence F. (Dick) Schendel and Ellie Y. Schendel, application 5520, for an 11.121 permit to divert 90 acre-feet of water per annum to irrigate 50 acres of land within a 367.37 acre tract and to divert 240 acre-feet of water per annum to irrigate 240 acres of land within a 1417.40 acre-tract directly from the San Antonio River, San Antonio River Basin, Goliad County. The adjacent tracts are located in the Maria Jesus De Leon Grant, Abstract 22. Water will be diverted from a point on the left, or north, bank of the San Antonio River, South 17 degrees 20' West, 17,600 feet from the northeast corner of the aforesaid Maria Jesus De Leon grant, at a maximum rate of 2.2 cfs (1000 gpm).

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898

Filed: April 19, 1989, 1:27 p.m.

TRD-8903581

Monday, June 12, 1989, 10 a.m. The commission will consider application by City of Temple, application 5226 for an 11.143 permit to use an exempt existing dam and reservoir for recreational purposes on an unnamed tributary of Williamson Creek, tributary of Little Elm Creek, tributary of Big Elm Creek, tributary of Little River, tributary of the Brazos River, Brazos River Basin, in Bell County. The three acre-foot

reservoir has a surface area of one acre. The dam is within the city limits of Temple and in the Maximo Moreno grant, abstract 14, which is in conflict with the B. Stracener survey, abstract 746 and the C. Clark survey, abstract 205, Bell County, and the midpoint of the dam at the stream is South 66 degrees East, 3500 feet from the north-west corner of the aforesaid.

Contact: Brenda W. Foster, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: April 19, 1989, 1:27 p.m.

TRD-8903580

Texas Water Development Board

Thursday, April 20, 1989, 9 a.m. The Texas Water Development Board submitted an emergency revised agenda for a meeting held in Room 118, Stephen F. Austin Building, 1706 North Congress Avenue, Austin. According to the agenda summary, the board considered setting the lending rate scale for Series 1989-A and 1989-B bond proceeds. The emergency status was necessary to allow the closing of loans financed from the board's series 1989-A and 1989-B bond proceeds prior to the deadline established by the Farmers Home Administration.

Contact: M. Reginald Arnold II, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: April 19, 1989, 2:33 p.m.

TRD-8903587

Regional Meetings

Meetings Filed April 18, 1989

The Burnet County Appraisal District, Appraisal Review Board, will meet at 215 South Pierce, Burnet, on April 25, 1989, at 2 p.m. Information may be obtained from Barbara Ratliff, Drawer E, Burnet, Texas 78611, (512) 756-8291.

The Central Texas Council of Governments, Transportation Planning Committee, will meet in Room 101, Killeen Community Center, 2201 East Business 190, Killeen, on April 18, 1989, at 10 a.m. Information may be obtained from Gerald B. Bunker, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Central Texas MHMR Center, Board of Trustees, met at 408 Mulberry Drive, Brownwood, on April 24, 1989, at 5 p.m. Information may be obtained from Danny Armstrong, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, ext. 102.

The Dallas Central Appraisal District, Appraisal Review Board, will meet in Suite 500, 1420 West Mockingbird Lane, Dallas,

on April 28, 1989, at 8:30 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The Dewitt County Appraisal District, Board of Directors, met for an emergency agenda revision at 103 Bailey Street, Cuero, on April 18, 1989, at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Education Service Center, Region XIII, Board of Directors, met in Room 205, ESC, Region XIII, 5701 Springdale Road, Austin, on April 24, 1989, at 12:45 p.m. Information may be obtained from Dr. Joe Parks, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300.

The Golden Crescent Regional Planning Commission, Board of Directors, will meet at the Bauer Community Center, Highway 35, Port Lavaca, on April 26, 1989, at 5:30 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Lamar County Appraisal District, Regular Board Meeting, will be held at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, on April 26, 1989, at 5 p.m. Information may be obtained from Betty Hanna, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822.

The Middle Rio Grande Development Council, Texas Review and Comment System Committee, will meet in the Commissioner's Courtroom, 500 Quarry Street, Eagle Pass, on April 26, 1989, at 10 a.m. Information may be obtained from Dora Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The Nortex Regional Planning Commission, Executive Committee, met in the Wichita II Room, Hilton Hotel, 401 Broad Street, Wichita Falls, on April 20, 1989, at noon. Information may be obtained from Mayor Mary Lee Nix, 2101 Kemp Boulevard, Wichita Falls, Texas, (817) 322-5281.

The Red River Authority of Texas, Board of Directors, met in the Burk Room, Hilton Hotel, 401 Broad Street, Wichita Falls, on April 21, 1989, at 9 a.m. Information may be obtained from Ronald J. Glenn, 520 Hamilton Building, Wichita Falls, Texas 76301, (817) 723-8697.

The West Central Texas Municipal Water District, will meet in Suite 300, 401 Cypress, Abilene, on April 25, 1989, at 9:30 a.m. Information may be obtained from Virginia Duncan, P.O. Box 2362, Abilene, Texas, (915) 673-8254.

TRD-8903528

Meetings Filed April 19, 1989

The Ark-Tex Council of Governments, Executive Committee will meet in the Vine-

yard Room, Mount Pleasant Country Club, Mount Pleasant, on April 27, 1989, at 5 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75505, (214) 832-8636.

The Education Service Center, Region VIII, Board of Directors, will meet at the Holiday Hotel, Mount Pleasant, on April 27, 1989, at 6:30 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mount Pleasant, Texas 75455.

The Hunt County Tax Appraisal District, Board of Directors, will meet in the boardroom, 4801 King Street, Greenville, on April 27, 1989, at noon. Information may be obtained from Joe Pat Davis or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (214) 454-3510.

The Leon County Central Appraisal District, Board of Directors, met at Leon County Central Appraisal District Office, Centerville, on April 24, 1989, at 7 p.m. Information may be obtained from Robert M. Winn, P.O. Box 53, Centerville, Texas 75833, (214) 536-2252.

The Pecan Valley Mental Health Mental Retardation Region, Board of Trustees, will meet at 104 Charles Street, Granbury, on April 26, 1989, at 8 a.m. Information may be obtained from Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Tarrant Appraisal District, Board of Directors, will meet at 2301 Gravel Road, Fort Worth, on April 25, 1989, at 9 a.m. Information may be obtained from Olive Miller, 2301 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005.

The Tyler County Appraisal District, Appraisal Review Board will meet at 806 West Bluff, Woodville, on April 26 1989, at 2 p.m. The Board of Directors will meet at the same location on April 27 and May 2, at 3 p.m. and 4 p.m., respectively. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

The West Central Texas Council of Governments, Executive Committee, will meet at 1025 East North 10th Street, Abilene, on April 26, 1989, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 East North 10th Street, Abilene, Texas 79601, (915) 672-8544.

The Wheeler County Appraisal District, Board of Directors, will meet at the County Courthouse Square, Wheeler, on May 1, 1989, at 2 p.m. Information may be obtained from Marilyn Copeland, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900.

TRD-8903567

Meetings Filed April 20, 1989

The Education Service Center, Region

XV, Regional Advisory Committee and Board of Directors, will meet at 612 South Irene Street, San Angelo, on April 25, 1989, at 10 a.m. and 1:30 p.m., respectively. Information may be obtained from Clyde Warren, 612 South Irene Street, San Angelo, Texas 76903.

The Lee County Appraisal District, Board of Directors, will meet at 218 East Richmond Street, Giddings, on April 26, 1989, at 9 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942 (409) 542-9618.

The Lower Colorado River Authority, Ad Hoc Committee of Board of Directors, met at 3700 Lake Austin Boulevard, Austin, on April 24, 1989, at 2 p. m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3250.

The North Central Texas Council of Governments, Executive Board, will meet on the Second Floor, Centerpoint Two, 616 Six Flags Drive, Arlington, on April 27, 1989, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Drawer COG, Arlington, Texas 76005-5888, (817) 640-3300.

The South Texas Private Industry Council, Inc., will meet at Highway 83 and 10th Street, Zapata, on April 27, 1989, at 4 p.m. Information may be obtained from Ruben M. Garcia, P.O. Box 1757, Laredo, Texas 78044-1757.

The Trinity River Authority of Texas, Board of Directors, will meet at 5300 South Collins, Arlington, on April 26, 1989, at 10 a.m. Information may be obtained from Jack C. Worshan, P.O. Box 60, Arlington, Texas 76010, (817) 467-4343.

TRD-8903605



In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Banking Notices of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a trust company to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular trust company. A hearing may be held if the application is denied by the commissioner.

On April 13, 1989, the banking commissioner received an application to acquire control of Resources Trust Company of the Southwest, Inc., Houston, by Xavier D. Autrey M., Mexico.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on April 17, 1989.

TRD-8903485 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: April 17, 1989

For further information, please call (512) 479-1200

◆ ◆ ◆
Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On March 14, 1989, the banking commissioner received an application to acquire control of TB&T Bancshares, Inc., Brownsville, by Frank D. Yturria of Brownsville.

On April 14, 1989, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on April 17, 1989.

TRD-89 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: April 17, 1989

For further information, please call (512) 479-1200

◆ ◆ ◆
Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On March 27, 1989, the banking commissioner received an application to acquire control of TB&T Bancshares, Inc., Brownsville, by George R. Farish, Houston.

On April 14, 1989, notice was given that the application would not be denied.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on April 17, 1989.

TRD-8903483 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: April 17, 1989

For further information, please call (512) 479-1200

◆ ◆ ◆
Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On April 17, 1989, the banking commissioner received an application to acquire control of TransTexas Bancshares, Inc., Beaumont, by Donald H. Anderson, Sherman.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on April 17, 1989.

TRD-8903533 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: April 18, 1989, 10:25 a.m.

For further information, please call (512) 479-1200

◆ ◆ ◆ Notice of Hearing

The hearing officer of the State Banking Department will conduct a hearing for application for license to sell pre-need funeral service and merchandise contracts by James Robert Bass, McAllen. The hearing will be held on May 10, 1989, at 9 a.m., at Texas Department of Banking, 2601 North Lamar, Austin.

Additional information may be obtained from Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar, Austin, Texas 78705, (512) 479-1200.

Issued in Austin, Texas on April 18, 1989.

TRD-8903536 Ann Graham
General Counsel
State Banking Department

Filed: April 18, 1989

For further information, please call (512) 479-1200

Notice of Hearing Cancellation

As no opposition has been noted in the application for domicile change by First Southern Trust Company, Dallas, the hearing previously scheduled for April 27, 1989, has been canceled.

Issued in Austin, Texas on April 18, 1989.

TRD-8903540

William F. Adridge
Director of Corporate Activities
Texas Department of Banking

Filed: April 18, 1989, 2:05 p.m.

For further information, please call (512) 479-1200

Texas Cancer Council Computerized Cancer Study Communication Network

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Cancer Council requests proposals for development, implementation, and maintenance of a statewide Computerized Cancer Study Communication Network.

Description of Services. In its final report, the Legislative Task Force on Cancer in Texas (LTFCT), emphasized the need for cancer patients to receive the most current treatment possible and for physicians and other health professionals in the community to have access to the most current information available in cancer therapy. A request for proposal (RFP), was issued in the *Texas Register* on December 16, 1986, requesting proposals for development, implementation, and maintenance of a statewide computerized cancer study communications network. Refer to RFP issued December 16, 1986, for original specifics.

A contract was awarded as a result of the above mentioned RFP. The contractors accomplished parts of the seven overall tasks in the original RFP. The specific tasks accomplished to date include: the computer hardware and software has been installed and tested; a database management system has been installed and tested; computer programs to create protocol database and to allow queries have been implemented; data on 216 protocols have been collected and entered into the computer; the interface with the PDQ has been designed. In addition, the contractors have identified tasks which can be accomplished within the scope of the project without additional costs.

The ongoing contract having been terminated, the Texas Cancer Council requests proposals from single-source institutions to complete the accomplishment of the council's goal of making the most current information on cancer therapy available to physicians and other health professionals in Texas. The contractor will implement and maintain a computerized communication network for physicians and other health professionals in Texas. The contractor will implement and maintain a computerized communication network for physicians and other health professionals throughout Texas with an interest in cancer. The contractor will also: assess degree of need and feasibility of an on-line cancer treatment guideline system; review information sources such as the oncology guidelines developed by the LTFCT and the NCI PDQ system; and determine a strategy for selection, review, structuring, and updating of such information. The contractor will work closely with the Cancer Research Advisory Committee and the Oncology Guidelines Advisory Committee of the Texas Cancer Council.

The network will provide an individual as well as a group

medium for continuous communication on cancer related topics among health professionals at cancer centers and in the Texas community. The network will provide information through case presentations, assistance through a question and answer facility for the treatment of cancer patients, and will publicize opportunities for participation in investigational studies, implementation of new technology, and education programs.

Major Tasks. The following tasks are to be accomplished by the contractor under the award of the contract: organize expert participation and support for the network; develop and execute marketing and publicity strategies; in conjunction with the Texas Cancer Data Center, recruit physicians and other health professionals as network users; complete the implementation of the network including expert support; complete the implementation of interface with the PDQ so that a complete coverage of active protocols in Texas may be attained; develop databases related to patient education and cancer control; continue to maintain and upgrade the network.

Eligible Organizations. Each organization should be actively involved in cancer care in Texas and be willing to participate in a cooperative program.

Proposal Format. Refer to original RFP, December 16, 1986, for original specifics.

Timetable. The Computerized Cancer Study Communication Network initiative is intended to be at least a five year program. However, submitted proposals should cover only the first phase of the program in detail for a total of no longer than three months, ending August 31, 1989, with some general discussion of the overall program for the following year.

Evaluation Procedures. Refer to RFP issued December 16, 1986, for original specifics.

Contact Person. The contact person is D. L. Moore, M.D., Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Due Date. All Proposals must be submitted by the close of business on the 20th-day after the first date of publication of this notice. Proposals must be sent by certified mail or delivered directly to the contact person by the above date previously referred to.

Cost. The proposed contract shall be a cost reimbursement type contract. The Texas Cancer Council has adopted a policy to pay for the direct cost of program implementation, including fringe benefits, but excluding indirect or overhead costs. The Texas Cancer Council will assess the reasonableness of the total project cost and specific cost elements by major task. Although not necessarily the deciding factor, this criterion will be considered in the evaluation process. Some level of cost sharing proposed by the contractor is expected. The degree of cost sharing proposed by the contractor will reflect the importance of this effort to ongoing programs of the contractor.

Final Selection. Final selection will be made by the Texas Cancer Council using the previously identified evaluation criteria. The award will not necessarily be made to the lowest bidder, but rather to the lowest and best bidder, considering cost and the results of the council's evaluation.

Issued in Austin, Texas on April 19, 1989.

TRD-8903568

D. L. Moore
Executive Director
Texas Cancer Council

Filed: April 19, 1989

For further information, please call (512) 463-3190

Texas Employment Commission Consultant Contract Amendment

The Texas Employment Commission is amending the consulting contract it has with Ghost Writers Consultants, which it originally entered into on August 5, 1988.

Under this contract, Ghost Writers Consultants is to assist the Texas Employment Commission with the preparation and production of a monthly newsletter.

The original contract will be amended to increase the maximum amount payable to \$16,800, and the period of service has been extended to August 31, 1989.

For further information, contact Mike C. Wheeler, Texas Employment Commission, 101 East 15th Street, Austin, Texas 78778, (512) 463 2433.

Issued in Austin, Texas on April 17, 1989.

TRD-8903548 C. Ed Davis
Special Counsel
Texas Employment Commission

Filed: Texas Employment Commission

For further information, please call (512) 463-2291

Governor's Office of Budget and Planning Consultant Proposal Request

This request for professional services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Energy Management Center (EMC) in the Governor's Office of Budget and Planning invites proposals from qualified agencies, institutions of higher education, associations, firms, and individuals to provide energy audits for buildings owned by the state, local governments, independent school districts, or institutions of higher education. The proposers selected will be hired to perform these services on an as-requested basis. Energy audits performed under this program will follow the Texas Energy Cost Containment Program (TECCP) or Institutional Conservation Program (ICP) format.

Services to be Performed.

Contractors will be selected to perform the following services:

- (1) participate in a one-day audit procedures meeting conducted by EMC to ensure compliance with the audit guidelines;
- (2) contact assigned institutions to review energy consumption and building data provided by the institutions and to schedule on-site visits;
- (3) perform walk-through energy audits of assigned buildings to identify improvements in current energy operation and maintenance practices, and to identify building systems where detailed engineering audits should be performed;
- (4) conduct detailed engineering energy audits of assigned buildings;
- (5) review previously identified energy conservation opportunities to determine if the evaluations are still valid given changes in technology, original assumptions or economic factors. If appropriate, update the evaluation to conform to the current factors;
- (6) prepare written energy audit reports, following EMC

audit guidelines that, at a minimum, will: (a) describe the major building HVAC and lighting equipment, metering equipment, and energy use characteristics; (b) describe and analyze all viable recommendations for energy cost reduction measures with paybacks of four years or less; (c) detail recommendations for maintenance and operation improvements including paybacks; (d) analyze utility rate schedules for possible capital retrofit opportunities that will reduce electrical demand costs; and (e) give a brief description, for future analysis, of potential cost-saving measures with paybacks greater than four years and less than 10 years.

(7) provide three copies of the energy audit report to the management firm for technical review and approval;

(8) provide six copies of the final report, as approved by EMC, for distribution to the management firm, program administrators, and institutional recipients.

(9) review reports for accuracy and compliance with sound engineering practices by a professional engineer registered in the state of Texas.

(10) cooperate with the managing contractor during the technical review to assure that the technical quality of the audit reports meets the program requirements and complies with generally accepted engineering practices.

Contact Person. To obtain more detailed information concerning this project, contact Eric Moore, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711; (512) 463-1931. The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701.

Closing Date. Six copies of the sealed proposals should be sent to Sherri Rains, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931. The Energy Management Center is located in Room 620 of the Sam Houston State Office Building, 201 East 14th Street, Austin, Texas 78701. Proposals should be sent by certified mail or by courier and must be received no later than 3 p.m. on June 2, 1989. Proposals received after that time will not be considered.

Selection Criteria. To be selected, prospective contractors must demonstrate a comprehensive knowledge of energy using systems in institutional and government buildings, energy management technologies, energy savings calculation methodologies, and ICP and TECCP guidelines. Proposals should be short, concise, clearly written, and must specifically cover the consulting services requested. Proposals will be judged on their overall quality. Proposals should address the following selection criteria in the order given:

(1) previous work experience related to state, federal, and commercial building audit programs;

(2) demonstrated in-depth knowledge of energy conservation technologies, energy audits, ICP and TECCP guidelines, and building operation and maintenance practices;

(3) reasonableness of the proposed budget for the following classifications: project manager; senior engineer/audit team leader (must be a registered professional engineer unless this qualification is waived by EMC); staff engineer; engineers-in-training/technicians; administrative staff.

(4) quality of the written proposal.

Final selection of the contractor will be based on the recommendations of a review committee. If two or more proposals are ranked so closely that a decision cannot be

made, the review committee may request finalists to provide additional information or to meet with EMC staff in Austin prior to final selection of the contractor. No respondent will be reimbursed for any cost incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas on April 17, 1989.

TRD-8903571 Ron Lindray
Director
Governor's Office of Budget and Planning

Filed: April 19, 1989

For further information, please call (512) 463-1931

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**Office of the Governor Criminal
Justice Division**
Texas Narcotics Control Program

Under the provisions of the Anti-Drug Abuse Act of 1988 (Public Law 100-690), Texas has received a grant in the amount of \$6.74 million (federal fiscal year 1989 appropriation) to provide funding for the Texas Narcotics Control Program (TNCP). The governor has designated the Criminal Justice Division, Office of the Governor, to administer the program in the form of grants to units of government, as authorized by the Act. The Criminal Justice Division (CJD) is now accepting grant applications for eligible projects from state agencies and local units of government.

Programs will focus on drug law enforcement, with emphasis on persons who violate state and local laws relating to the production, possession, and transfer of controlled substances. The funds may be used to support projects which improve the apprehension, prosecution, adjudication, or identification of drug offenders for rehabilitation at the time of detention.

Eligible Projects. Only those projects designed for the purposes of enforcing state and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 United States Code 801, et seq.), and improve the functioning of the criminal justice system with emphasis on violent crime and serious offenders are eligible for grant funding. Such projects must conform to the authorized program areas as specified in the TNCP 1989 application kit and prioritized by the *Statewide Strategy for Drug and Violent Crime Control* (February 1989), available from CJD. Additionally, to be eligible, each project must be operated by a state agency, local unit of government, or by a combination thereof; each project must demonstrate that it will carry out congressional intent, which is to ensure that the federal assistance provided is coordinated and integrated with state and local drug enforcement efforts, and that the maximum impact on the drug trafficking problem in the state is achieved; and each project must be funded by 75% federal funds and 25% non-federal funds.

Significant Restrictions and Special Requirements. Grantees must comply with numerous state and federal certifications and special conditions, as detailed in the 1989 application kit, which govern use of this bloc grant. Total capital expenditures cannot exceed 20% of the total amount of an individual grant. Confidential funds require a 25% cash match by local contribution. Required cash match can be provided by program income. The grant

project period for any projects funded by this available bloc of funds will commence September 1, 1989, for a 12 month period.

Alcohol-related programs may not be funded under the TNCP, as the Controlled Substances Act expressly states that distilled spirits are not considered a controlled substance. Funds may not be used to replace federal, state, or local funds that would have been available for narcotics control programs in the absence of Anti-Drug Abuse Act funding. All applications must comply with the program criteria and applicable rules of CJD, and must be submitted in the form prescribed by CJD. CJD reserves the right to negotiate modifications to improve the quality and cost effectiveness of any proposed project and to recommend to the governor the acceptance with modification, or rejection of any grant application. This announcement in no way obligates CJD to award grant funds or to pay any costs incurred by applicants as a result of responding to this announcement.

Submission Deadline. Applications must be received by CJD no later than 5 p.m. on Thursday, June 15, 1989. Applicants must submit copies of applications to the state single point of contact or the regional review agency for review as required under the Texas review and comment system (TRACS).

Application Materials. Application kits, forms and all materials necessary to complete a grant application for this program are available through CJD or the regional councils of governments.

Issued in Austin, Texas on April 18, 1989.

TRD-8903574 David R. Millard, III
Assistant General Counsel, Criminal Justice
Division
Office of the Governor Criminal Justice
Division

Filed: April 19, 1989

For further information, please call (512) 463-1919

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Texas Department of Human Services
Public Notice Open Solicitation

Pursuant to the Human Resources Code, 40 TAC §16.1513, the Texas Department of Human Services (TDHS) is announcing an additional open solicitation period of 30 days (starting the date of this public notice) for all counties except Wilson and Red River which were identified in the March 3, 1989, issue of the *Texas Register* (14 TexReg 1122). Potential contractors desiring to construct a 90-bed nursing facility in any of the counties identified in this public notice must submit a written application (as described in 40 TAC §16.1513) to TDHS, Services to Aged and Disabled, Provider Services Division, Mail Code 350-E, P. O. Box 149030, Austin, Texas 78714-9030. This written application must be received by TDHS by 5 p.m. on May 25, 1989, the last day of this open solicitation period. The secondary random selection drawing will be held on August 23, 1989. If no potential contractors submit replies during the open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies to the public notice.

Occupancy rates for identified threshold counties are listed below:

County Number	County Name	Month Over	Month					
			JUL	AUG	SEP	OCT	NOV	DEC
002	ANDREWS	5	91.1	90.2	91.7	92.1	90.7	89.6
004	ARANSAS	6	91.4	94.6	95.4	94.6	93.8	90.8
005	ARCHER	6	95.7	97.5	95.7	93.5	90.1	90.5
006	ARMSTRONG	6	96.0	97.9	99.0	97.9	95.7	97.4
010	BANDERA	5	80.6	92.6	92.7	94.0	95.3	94.8
018	BOSQUE	6	96.9	98.3	98.5	98.6	97.8	97.5
033	CARSON	6	98.0	98.4	96.2	96.2	96.2	98.1
052	CRANE	6	95.2	98.1	98.3	95.9	96.8	99.4
062	DEWITT	6	92.1	93.4	93.7	94.5	93.6	93.9
065	DONLEY	6	98.7	99.6	99.2	99.3	99.6	99.5
083	GAINES	5	96.0	93.1	97.6	95.0	83.3	92.9
086	GILLESPIE	6	95.0	95.0	94.3	91.8	92.9	95.0
088	GOLIAD	6	94.6	96.5	96.6	94.9	92.6	96.7
094	GUADALUPE	5	91.7	93.1	94.3	94.6	93.5	92.8
100	HARDIN	6	90.4	91.3	92.0	90.7	93.1	93.0
110	HOCKLEY	6	91.6	93.1	93.7	91.2	92.8	95.3
111	HOOD	6	97.2	94.6	95.3	97.4	97.6	97.0
114	HOWARD	5	92.2	89.2	92.2	92.2	92.1	91.9
120	JACKSON	6	98.8	98.6	98.3	99.3	99.1	99.1
141	LAMPASAS	6	95.0	94.8	92.6	92.5	93.0	94.8
143	LAVACA	6	95.5	94.5	95.9	96.8	96.1	97.0
146	LIBERTY	6	92.6	92.0	91.9	90.7	90.6	91.8
149	LIVE OAK	6	96.5	96.6	97.1	97.0	96.6	96.7
155	MARION	6	98.3	97.6	97.3	98.2	98.2	97.5
190	RAINS	6	96.2	97.1	98.4	97.2	99.4	93.9
196	REFUGIO	6	94.4	95.1	93.9	95.6	95.6	96.1
213	SOMERVELL	6	99.9	97.2	99.6	100.0	99.8	100.0
219	SWISHER	6	92.7	96.0	95.6	97.3	98.7	94.0
233	VAL VERDE	5	91.0	93.9	89.4	91.9	95.9	94.0

Counties with no nursing facilities and a population of over 5,000 are listed below:

County Number	County Name
056	Dallam
066	Duval
124	Jim Hogg
142	La Salle
189	Presidio
304	San Jacinto
253	Zapata
254	Zavala

Issued in Austin, Texas, on April 18, 1989.

TRD-8903585 Charles Stevenson
Acting Commissioner
Texas Department of Human Services

Filed: April 18, 1989.

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

Request for Proposals

The Texas Department of Human Services (DHS), Region 06, Division of Services to Families and Children, is requesting proposals for evaluation and treatment services.

Description of Services: Services to be purchased include psychological testing, psychological evaluation, counseling/therapy, court appearance, and case specific consultation.

Geographic Area: The service area will include Lampasas, Mills, and San Saba counties.

Limitations: The contract shall be effective September 1, 1989 through August 31, 1991. The maximum amount to be awarded is \$24,000, contingent on available funds and final allocation for purchased services.

Contact Person: Application packets will be available on or after April 28, 1989. Please contact Jim Caruthers, Texas Department of Human Services; P.O. Box 15995 (MC 016-1), 7901 Cameron Road, Building #2, Austin, Texas 78761, (512)/335-2350, ext. 303 for an application packet.

Closing Date: Proposals may be received at the previously listed address no later than 4 p.m., May 19, 1989. The department reserves the right to withdraw this request for proposals at any time.

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

TRD-8903438 Charles Stevenson
Acting Commissioner
Texas Department of Human Services

Filed: April 17, 1989.

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

State Board of Insurance Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration:

1. Application for name change by Hanseco Insurance Company, a foreign casualty insurance company. The home office is in Wilmington, Delaware. The proposed new name is John Hancock Property and Casualty Insurance Company.
2. Application for name change by Mission National Life Insurance Company, a domestic life insurance company. The home office is in Fort Worth. The proposed new name is Western Casualty Life Insurance Company of Texas.
3. Application for admission to do business in Texas of Marquette Indemnity and Life Insurance Company, a foreign life insurance company. The home office is in Phoenix, Arizona.
4. Application for admission to do business in Texas of Benefit Administrators of America, Inc., a foreign third

party administrator. The home office is in Des Moines, Iowa.

5. Application for admission to do business in Texas of National Student Services, Inc., a foreign third party administrator. The home office is in Dover, Delaware.

Issued in Austin, Texas, on April 14, 1989

TRD-8903510 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: April 17, 1989

For further information, please call (512) 463-8327.

North Central Texas Council of Governments Consultant Contract Award

In accordance with Texas Civil Statutes, Article 6252-11c, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the February 17, 1989, issue of the *Texas Register* (13 TexReg 919). The consultant is to perform a transit maintenance and service facility needs assessment of the Fort Worth Transportation Authority.

The consultant selected to perform this study is Fleet Maintenance Consultants, Inc., 1880 Dairy Ashford, Suite 109, P.O. Box 820008, Houston, Texas 77282-0008. The maximum amount of this contract is \$49,958. The contract will begin on April 10, 1989, and will terminate on June 30, 1989.

At conclusion of this project, the consultant will document all findings and recommendations by compiling consultant task memos into a final report.

Issued in Austin, Texas on April 12, 1989.

TRD-8903431 William J. Pitstick
Executive Director
North Central Texas Council of
Governments

Filed: April 17, 1989

For further information, please call (817) 640-3300

Texas Water Commission Correction of Error

The Texas Water Commission submitted proposed sections which contained errors as submitted by the commission in the April 7, 1989, issue of the *Texas Register* (14 TexReg 1723).

In §297.1: The definition of "Reclaimed water" should read: "Reclaimed water—Domestic wastewater that is under the direct control of the treatment plant owner/operator which has been treated to a quality suitable for a beneficial use."

In §305.48: The second sentence of paragraph (4) should read: "Reclaimed water is domestic wastewater that is under the direct control of the treatment plant owner/operator which has been treated to a quality suitable for a beneficial use."

In the preamble to Chapter 310, Subchapter A: The first sentence of the third paragraph should read: "The 70th Legislature passed legislation which was signed by

the governor amending Texas Water Code, Chapter 26."

In §310.6: Subsection (j) was inadvertently omitted. The subsection should read: "(j) Nothing in this chapter modifies any requirements of the Texas Department of Health found in Title 25 Texas Administrative Code, Chapter 337."

In §310.8: The table describing "irrigation of food crops" in paragraph (1) should read on the sixth line: "Fecal Coliform (geometric Mean) 2. 2 CFU/100 ml"

In §310.16: Subparagraphs (2)(A) and (B) should read: "(A) shall use the reclaimed water in accordance with this chapter; and (B) must maintain and provide records as required by this chapter."

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Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Coolidge, Permit 10203-01 on April 14, 1989, assessing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Diane Wilcox, enforcement coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8903541 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: April 18, 1989

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

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Gorman, Permit 10091-01 on April 14, 1989, assessing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Diane Wilcox, enforcement coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8903542 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: April 18, 1989

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

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Poth, Permit 10052-01 on April 14, 1989, assessing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carlene Lancaster, enforcement coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8903543 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: April 18, 1989

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

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Murray Corporation, SWR 33063, on April 14, 1989, assessing \$34,680 in administrative penalties—\$11,560 deferred.

Information concerning any aspect of this order may be obtained by contacting Stephen C. Dickman, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-8903544 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: April 18, 1989

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

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Meeting Notice

A meeting of the Policy Committee of the Galveston Bay National Estuary Program is scheduled for Friday, April 28, 1989, 10 a.m., Acapulco Room, Hobby Hilton, Houston.

The Committee will consider advisory committee recommendations, office location recommendations, and program workplan drafts.

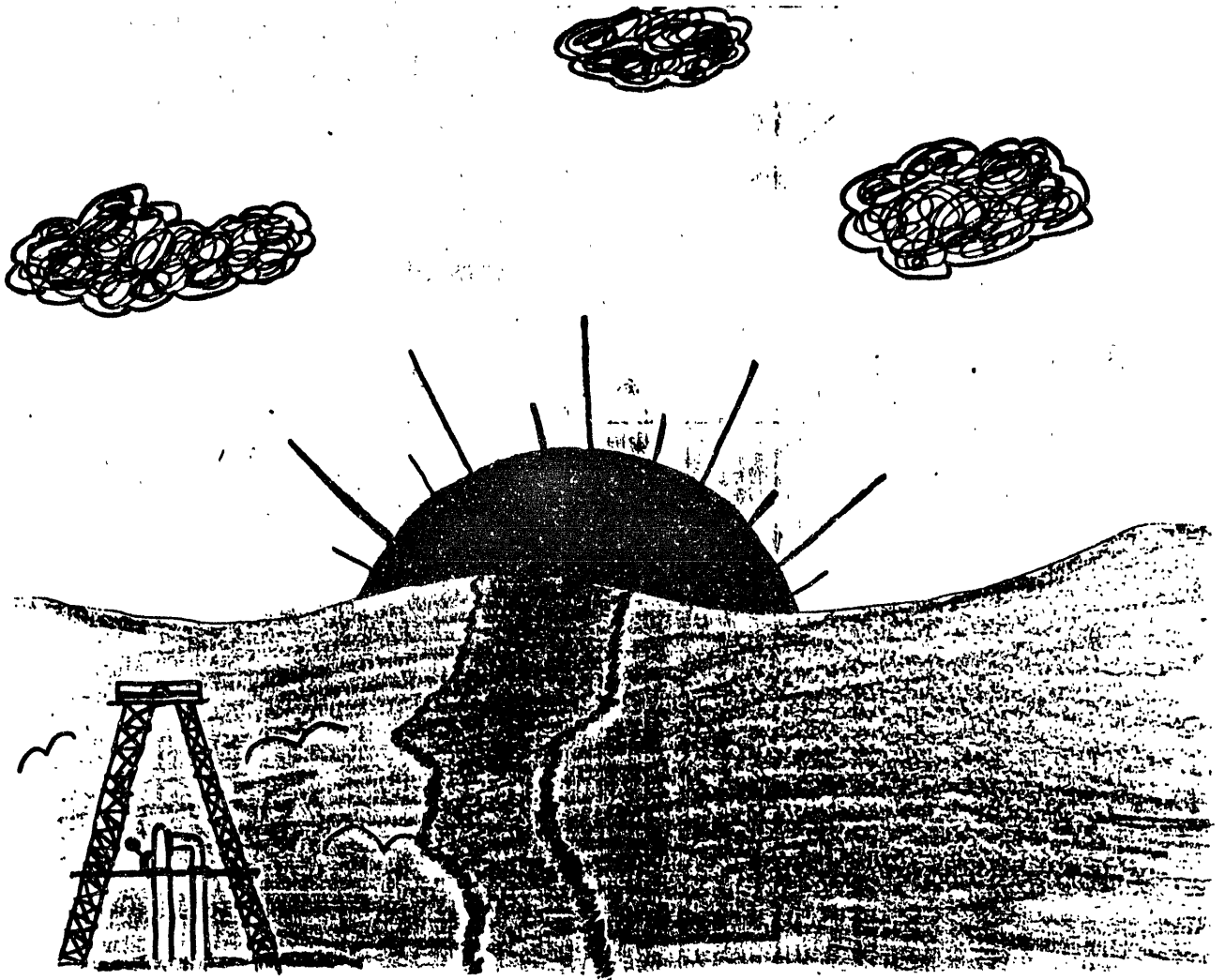
Issued in Austin, Texas on April 12, 1989.

TRD-8903471 B.J. Wynne, III
Chairman, Policy Committee Galveston Bay
National Estuary Program
Texas Water Commission

Filed: April 17, 1989

For further information, please call (512) 475-2161

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Name: Wendy Jolly

Grade: 5

School: Sweeny Elementary, Sweeny

Texas Aeronautics Commission

The National Airport Plan, approved in 1946, earmarked \$24.5 million for development of Texas airports. The Legislature created the Texas Aeronautics Commission to administer those funds and to formulate the Texas Airport System Plan.

The first years were devoted to defining and codifying the state's responsibilities for aeronautical activities. By the early 1950's, the commission had outlined an aviation program that included promoting use of planes in agriculture, civil air mobilization, and air safety and education. The Legislature amended the Aeronautics Act in 1961, calling for regulation of the burgeoning intrastate airline industry. Five years later, the commission was authorized to initiate a state airport grant program that continued to operate through 1986.

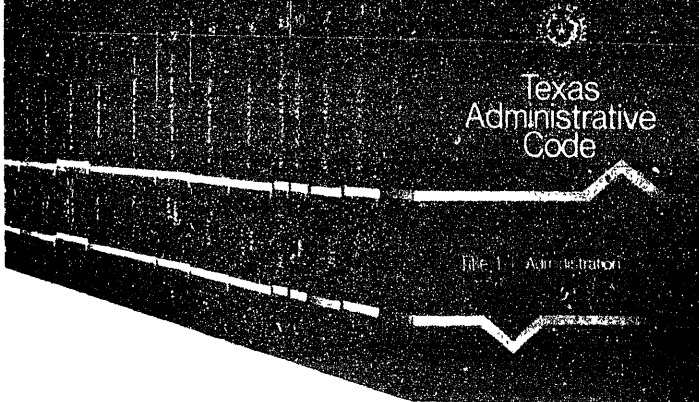
Today, the agency oversees maintenance and expansion of the state's network of airports.

The Services Division provides educational and regulatory assistance and publishes training and safety information. Staff members also locate and expedite transfer of federal surplus property for airports. The Facilities Division supports the industry with technical services and helps communities develop and implement airport and heliport zoning.

As part of its regulatory functions, the commission certifies commuter air carriers. It also investigates irregularities in carrier operations found by the staff or reported by the public.

The Texas Airport System Plan was revised last year to emphasize forecasted business and industrial needs. The commission hopes to facilitate statewide economic growth by strengthening our air transportation system. The Texas Aeronautics Commission is located in Austin and may be reached at (512) 476-9262.

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