# Texas Register

Volume 14, Number 42, June 9, 1989 Pages 2707–2795

# In This Issue...



# VOLUME 1, NUMBER 42

CONTENTS CONTINUED INSIDE

# Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week 100 times a year except March 7, 1989, June 2, 1989, July 7, 1989, November 28, 1989, and December 29, 1989. Issues will be published by the Office of the Secretary of State.



POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

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Withdrawn Sections–sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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# Withdrawn Section

*Texas Medical Disclosure Panel*

2795–Informed Consent

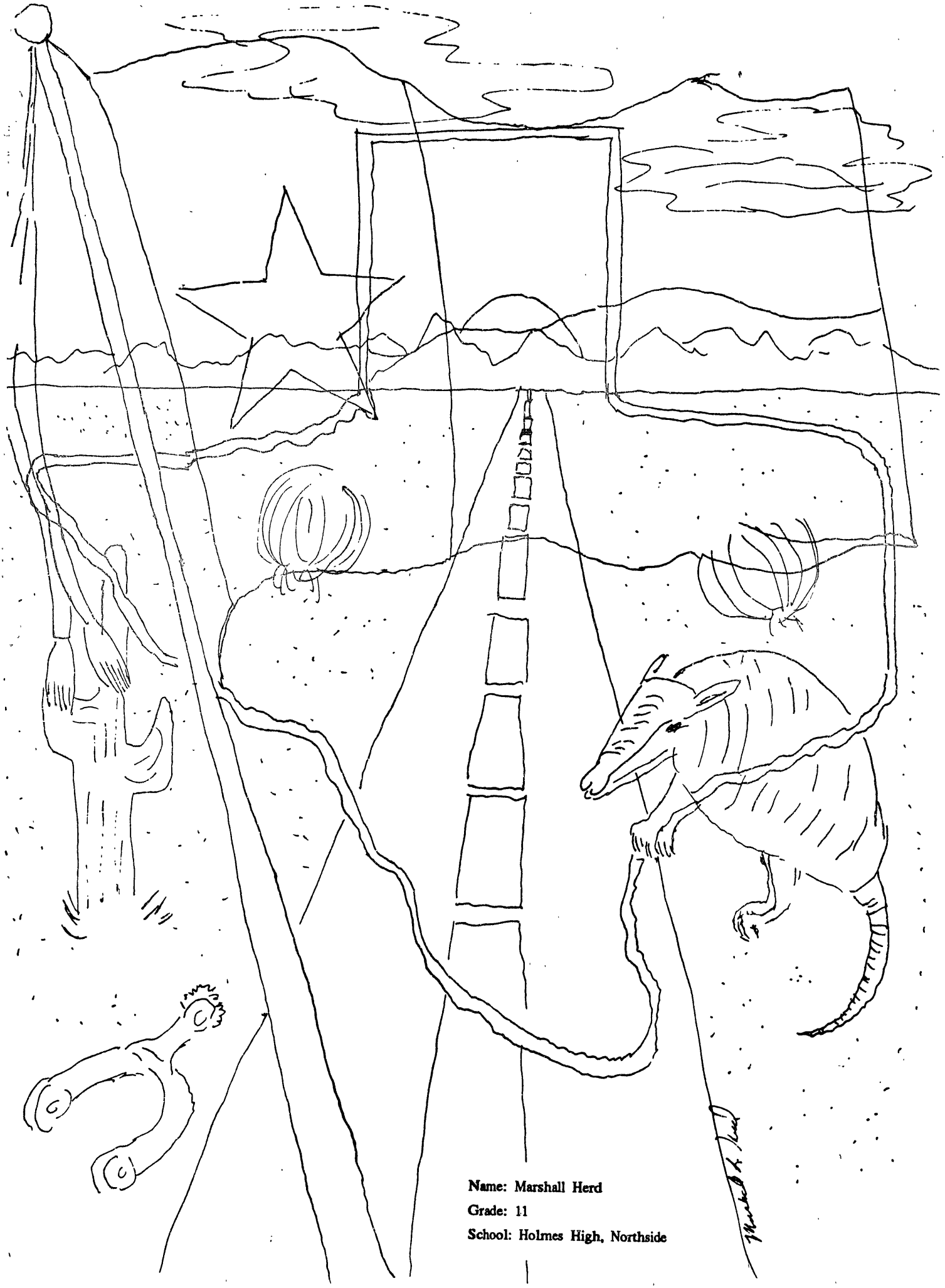
*Comptroller of Public Accounts*

**2795–Tax Administration**

Name: James Martinez

Grade: 12

School: Holmes High, Northside

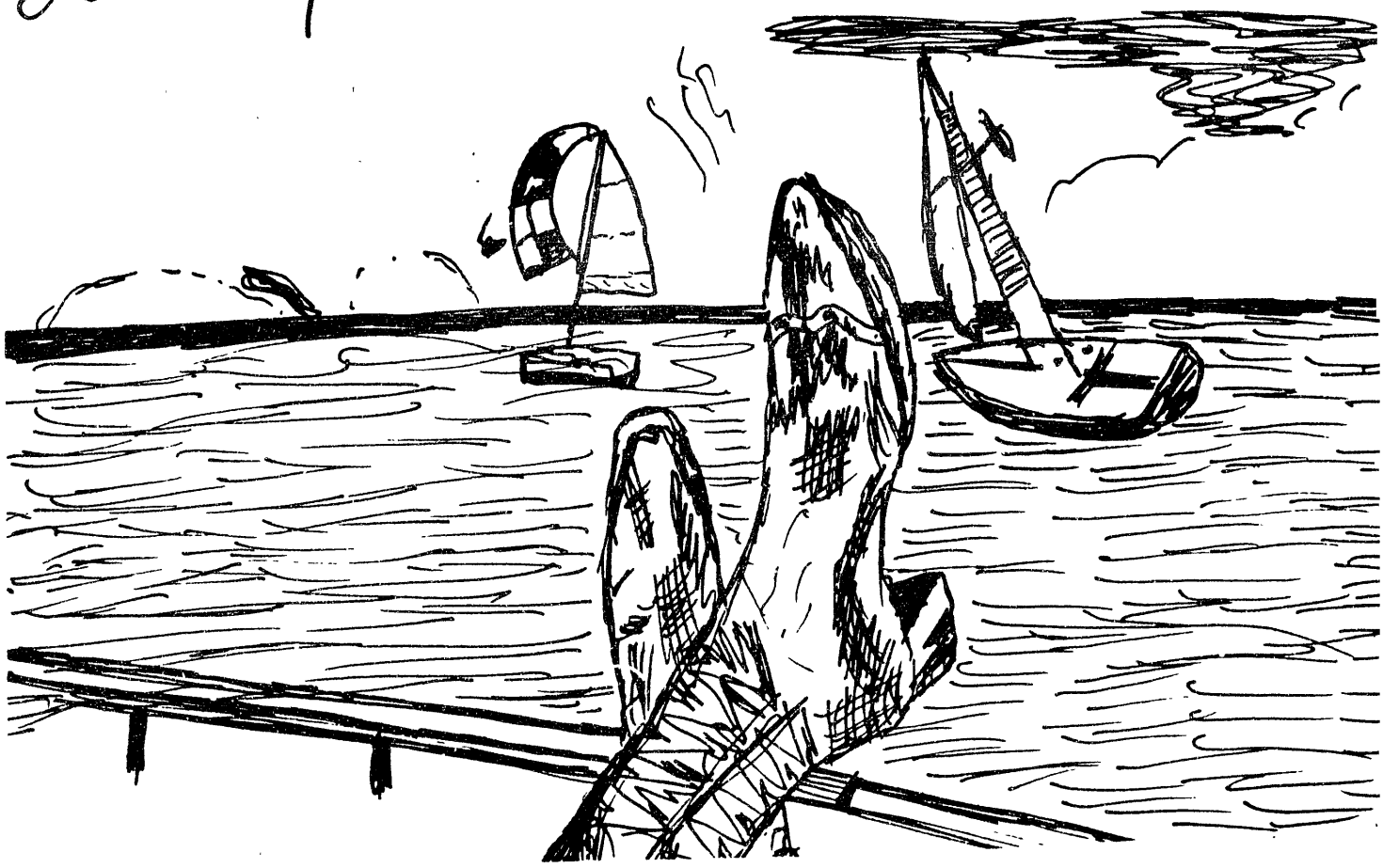


Name: Marshall Herd

Grade: 11

School: Holmes High, Northside

# Stay on the Beach!



Name: Crissy Legs

Grade: 12

School: Holmes High, Northside

# TAC Titles Affected

## TAC Titles Affected—June

The following is a list of the administrative rules that have been published this month.

### TITLE 1. ADMINISTRATION

***Part V. State Purchasing and General Services Commission***

1 TAC §§113.1, 113.2, 113.5, 113.6—2739

1 TAC §115.62—2797

### TITLE 16. ECONOMIC REGULATION

***Part I. Railroad Commission of Texas***

16 TAC §3.57—2647

***Part II. Public Utility Commission of Texas***

16 TAC §21.22—2740

16 TAC §23.25—2740

16 TAC §23.54—2898

***Part IV. Texas Department of Labor and Standards***

16 TAC §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, 65.100—2721, 2746

16 TAC §§65.12-65.18, 65.20-65.34—2736, 2747

16 TAC §§65.41-65.52—2747

16 TAC §§65.61-65.70—2736, 2747

16 TAC §§65.81-65.93—2737, 2748

16 TAC §§65.101-65.108—2737, 2748

16 TAC §§65.121-65.124—2737, 2748

### TITLE 19. EDUCATION

***Part I. Texas Higher Education Coordinating Board***

19 TAC §1.7—2748

19 TAC §§1.21-1.40—2750

19 TAC §§1.21-1.56—2749

***Part II. Texas Education Agency***

19 TAC §§69.127, 69.129—2649

19 TAC §149.43—2681

### TITLE 22. EXAMINING BOARDS

***Part I. Texas Board of Architectural Examiners***

22 TAC §1.136—2738, 2752

22 TAC §1.138—2900

22 TAC §1.122—2900

***Part IV. Texas Cosmetology Commission***

22 TAC §§81.1-81.3—2900

22 TAC §83.3—2752

22 TAC §83.5—2900

22 TAC §§85.1-85.3, 85.11-85.13, 85.21-85.23, 85.31-85.33, 85.41—2900

22 TAC §87.1-87.10, 87.21, 87.22, 87.31-87.34—2901

22 TAC §89.8—2752

22 TAC §89.13—2752

22 TAC §89.17—2753

22 TAC §89.20—2753

22 TAC §89.38—2753

22 TAC §89.39—2754

22 TAC §89.70—2754

***Part IX. State Board of Medical Examiners***

22 TAC §163.2—2650

### TITLE 25. HEALTH SERVICES

***Part I. Texas Department of Health***

25 TAC §31.4—2901

25 TAC §§229.141-229.149—2755

25 TAC §§229.291-229.298—2755

***Part II. Texas Department of Mental Health and Mental Retardation***

25 TAC §402.44—2773

***Part VII. Texas Medical Disclosure Panel***

25 TAC §601.1—2795

## TITLE 28. INSURANCE

***Part I. State Board of Insurance***

28 TAC §§8.1-8.3—2650

28 TAC §§27.801-27.808—2681

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

***Part I. General Land Office***

31 TAC §1.91—2774

31 TAC §2.1, §2.2—2774

31 TAC §§3.1-3.12, 3.14-3.15, 3.21-3.25, 3.31-3.34, 3.41-3.43, 3.51-3.52, 3.61, and 3.71—2774

31 TAC §§9.1-9.9—2775

31 TAC §§9.1-9.12—2775

31 TAC §11.11-11.17—2794

***Part IX. Texas Water Commission***

31 TAC §§311.61-311.66—2652

## TITLE 34. PUBLIC FINANCE

***Part I. Comptroller of Public Accounts***

34 TAC §3.554—2738

34 TAC §3.565—2738

34 TAC §3.640—2795

***Part IX. Bond Review Board***

34 TAC §§181.3-181.5—2901

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

***Part III. Texas Youth Commission***

37 TAC §119.3—2683

***Part V. Board of Pardons and Paroles***

37 TAC §141.21—2654

37 TAC §141.41, §141.42—2654

37 TAC §141.72, §141.73—2654

37 TAC §141.101—2655

37 TAC §141.111—2655

37 TAC §§143.1-143.12—2655

37 TAC §§143.2-143.11—2656

37 TAC §143.22—2657

37 TAC §143.52—2657

37 TAC §§145.1-145.21—2657

37 TAC §§145.2-145.12, 145.14-145.16—2659

37 TAC §§145.21-145.28—2660

37 TAC §§145.22-145.26—2660

37 TAC §§145.41, 145.42, 145.43—2662

37 TAC §§145.44-145.55—2663

37 TAC §§145.62—2669

37 TAC §§145.71, 145.72—2669

37 TAC §§147.1, 147.3, 147.5, 147.7—2669

37 TAC §147.27—2670

37 TAC §§149.1-149.6—2670

37 TAC §§149.2-149.7—2673

37 TAC §§149.11, 149.13, 149.15-149.17—2673

37 TAC §§149.13, 149.16-149.18—2674

37 TAC §§150.1-150.9—2674

***Part X. Texas Adult Probation Commission***

37 TAC §§321.1, 321.3, 321.5, 321.8—2683

37 TAC §§321.12-321.14, 321.16—2676

37 TAC §§323.1-323.3—2684

37 TAC §§325.1-325.12—2684

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

***Part I. Texas Department of Human Services***

40 TAC §§3.2201, 3.2203, 3.2204—2684

40 TAC §7.101—2902

40 TAC §§10.7001-10.7008—2684

40 TAC §29.502—2685

40 TAC §29.603, §29.606—2685

40 TAC §§47.2907, §47.2914—2677

40 TAC §53.301—2678

40 TAC §53.404—2678

## TITLE 43. TRANSPORTATION

***Part I. State Department of Highways and Public Transportation***

43 TAC §§21.31, 21.32, 21.35, 21.37-21.40, 21.42,-21.46, 21.48-21.51, 21.53, 21.54—2679

43 TAC §§21.33, 21.41—2679

♦ ♦ ♦

# 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 May 30, 1989

To be a judge of the **355th Judicial District Court, Hood County** until the next general election and until his successor shall be duly elected and qualified: Dan B. Grissom, 763 Bellechase, Granbury, Texas 76048. Mr. Grissom will be replacing Judge Ralph Walton, Jr. of Granbury, who resigned, effective June 6, 1989.

## Appointments Made May 31, 1989

To be a member of the **Sulphur River Basin Authority Board of Directors** for a term to expire February 1, 1993: Katherine Clyde Ramsay, Route 3, Box 382, Mt. Vernon, Texas 75457. Mrs. Ramsay will be filling the unexpired term of Jim Garza of Mount Pleasant, who resigned.

To be a member of the **Sulphur River Basin Authority Board of Directors** for a term to expire February 1, 1995: Curtis R. Fendley, 554 Church Street, Paris, Texas 75460. Mr. Fendley will be replacing David Glass of Paris, whose term expired.

To be a member of the **Sulphur River Basin Authority Board of Directors** for a term to expire February 1, 1995: David Baucom, 1308 Azalea Lane, Sulphur Springs, Texas 75482. Mr. Baucom will be replacing Walter Helm of Sulphur Springs, whose term expired.

To be a member of the **Brazos River Basin Authority Board of Directors** for a term to expire February 1, 1995: Ramiro A. Galindo, 3015 Hummingbird Circle, Bryan, Texas 77801. Mr. Galindo will be replacing Henry J. Boehm, Sr. of Brenham, whose term expired.

## Appointments Made June 1, 1989

To be a member of the **Texas Motor Vehicle Commission** for a term to expire January 31, 1993: Leonard E. Burton, 1618 Green Oaks Drive, Irving, Texas 75061. Mr. Burton will be filling the unexpired term of Paul Adams Rush of San Antonio, who resigned.

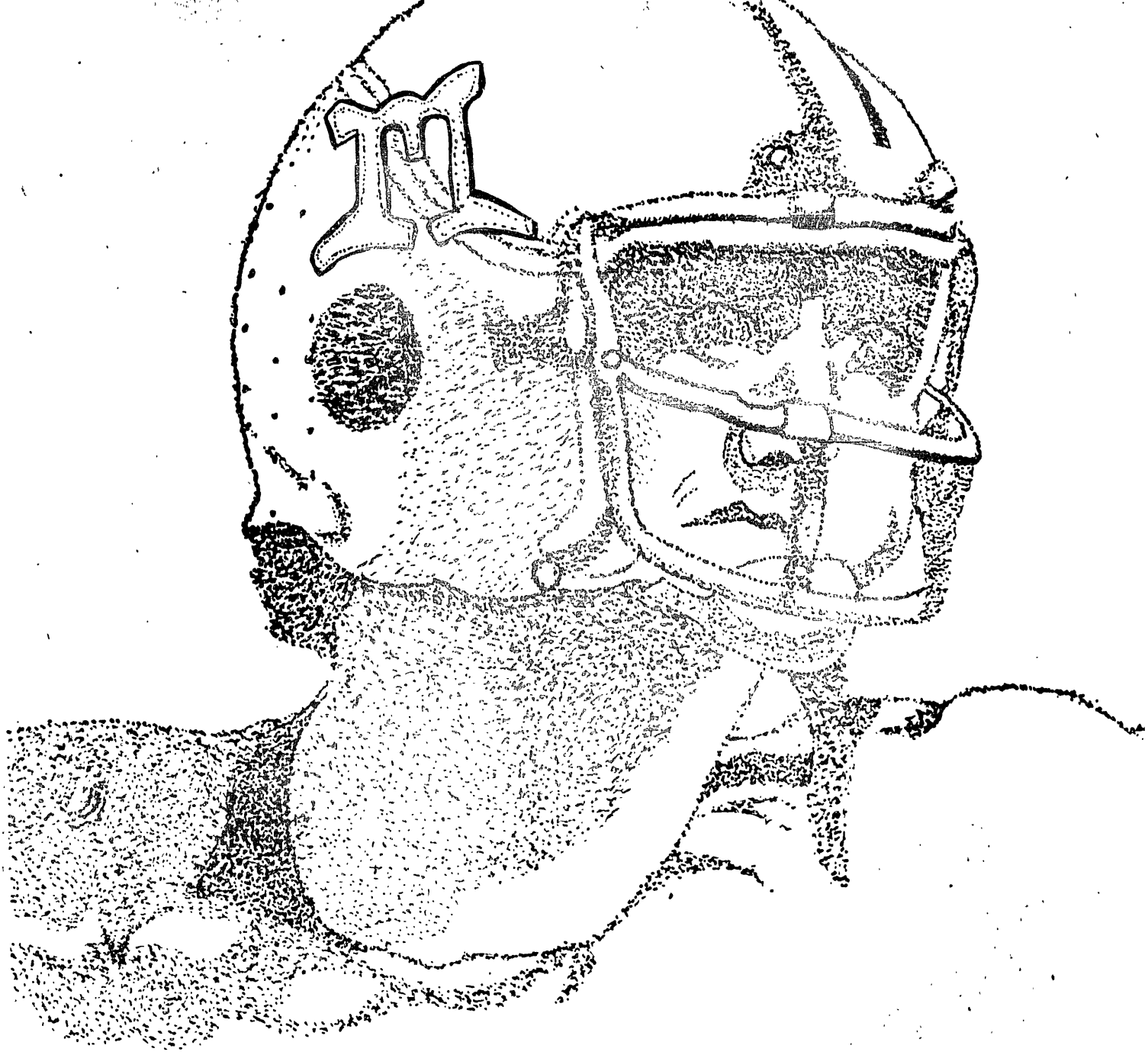
To be a member of the Texas **Optometry Board** for a term to expire January 31, 1995: Dr. Elzie Mac Wright, 905 Southwest Avenue J, Seminole, Texas 79360. Dr. Wright will be replacing Dr. Gene B. Blackwell of Childress whose term expired.

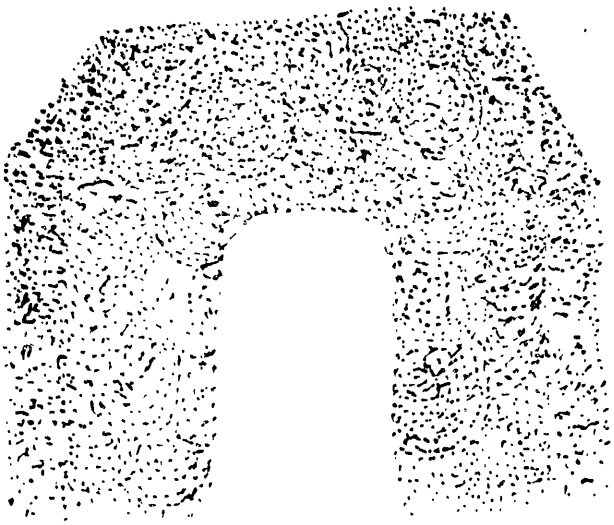
To be a member of the **Governing Board of the Texas School for the Blind** for a term to expire January 31, 1995: Chris D. Prentice, 2313 29th Street, Lubbock, Texas 79411. Mr. Prentice will be replacing Robert D. Tindle of Austin, whose term expired.

Issued in Austin, Texas on January 9, 1988.

TRD-8904842 William P. Clements, Jr.
Governor of Texas

♦ ♦ ♦





Name: Aaron Cook

Grade: 8

School: T.H. McDonald Middle School, Mesquite

## Executive Order

WPC 89-8

ESTABLISHING THE GOVERNOR'S OIL SPILL ADVISORY COMMITTEE

WHEREAS, the Texas Coast is subject to the constant risk of oil and chemical spills from industrial activities offshore; and,

WHEREAS, the Texas coast contains many sensitive areas which must be protected from threats posed by such oil and chemical spills; and,

WHEREAS, effective spill response activities necessitate the coordination and cooperation of federal, state, local, and private entities; and,

WHEREAS, the means by which to minimize the occurrence of spills and further increase coordinated and efficient activities in responding to future spills should be pursued on a continual basis; and,

WHEREAS, evolving state-of the-art technologies for containment and cleanup of spilled oil and chemicals must be constantly assessed and implemented; and,

WHEREAS, experience in responding to past spills can provide valuable lessons in dealing with future incidents;

NOW, THEREFORE, I, William P. Clements, Jr., Governor of Texas, under the authority vested in me, do hereby create and establish the Governor's Oil Spill Advisory Committee, hereinafter referred to as the ADVISORY COMMITTEE.

The ADVISORY COMMITTEE will consist of the following representatives of the five main state agencies and entities responsible for oil spill contingency planning:

Robert Lansford–Governor's Division of Emergency Management

Buck Jim Wynne, III–Texas Water Commission

Kent R. Hance–Railroad Commission of Texas

Garry Mauro–General Land Office

Charles D. Nash–Parks and Wildlife Department

These persons shall serve at the pleasure of the Governor. Robert Lansford shall be Chairman of the ADVISORY COMMITTEE and shall serve in such capacity at the pleasure of the Governor.

The ADVISORY COMMITTEE is charged with providing a report on offshore oil and chemical spill emergencies and responses thereto, considering the following:

a) the overall preparedness of the state agencies responsible for oil spill response to implement oil spill contingency plans and the adequacy of those plans;

b) the effectiveness of recommendations of the 1989 advisory panel to respond to future oil spill incidents;

c) additional preventive measures that could be applied throughout various stages of the process;

d) the potential for further coordinated interaction among federal, state, institutional, local, and private entities during a given spill response; and,

e) the availability of state-of-the-art technology and specialized equipment located within or outside the State which could be employed to prevent, contain, and/or clean up an oil or chemical spill.

On or before September 30, 1989, the ADVISORY COMMITTEE shall make a complete written report to the Governor and the Texas Legislature.

The ADVISORY COMMITTEE shall meet regularly at the call of the Chairman. A majority of the membership shall constitute a quorum. The Chairman shall, in consultation with the Office of the Governor, establish the agenda for the ADVISORY COMMITTEE meetings. The Chairman shall have authority to establish such subcommittees as he deems necessary and appropriate and may appoint members of the ADVISORY COMMITTEE or others from government, industry or academic circles to such subcommittees and may establish the subcommittees' directives and agenda.

Staff assistance will be provided by the Office of the Governor and the Texas Water Commission, if needed. The General Land Office, State Department of Highways and Public Transportation, Department of Public Safety, Texas Parks and Wildlife Commission, Texas Air Control Board, Railroad Commission of Texas, and other state agencies and institutions are hereby directed to cooperate with and provide information and technical assistance to the ADVISORY COMMITTEE.

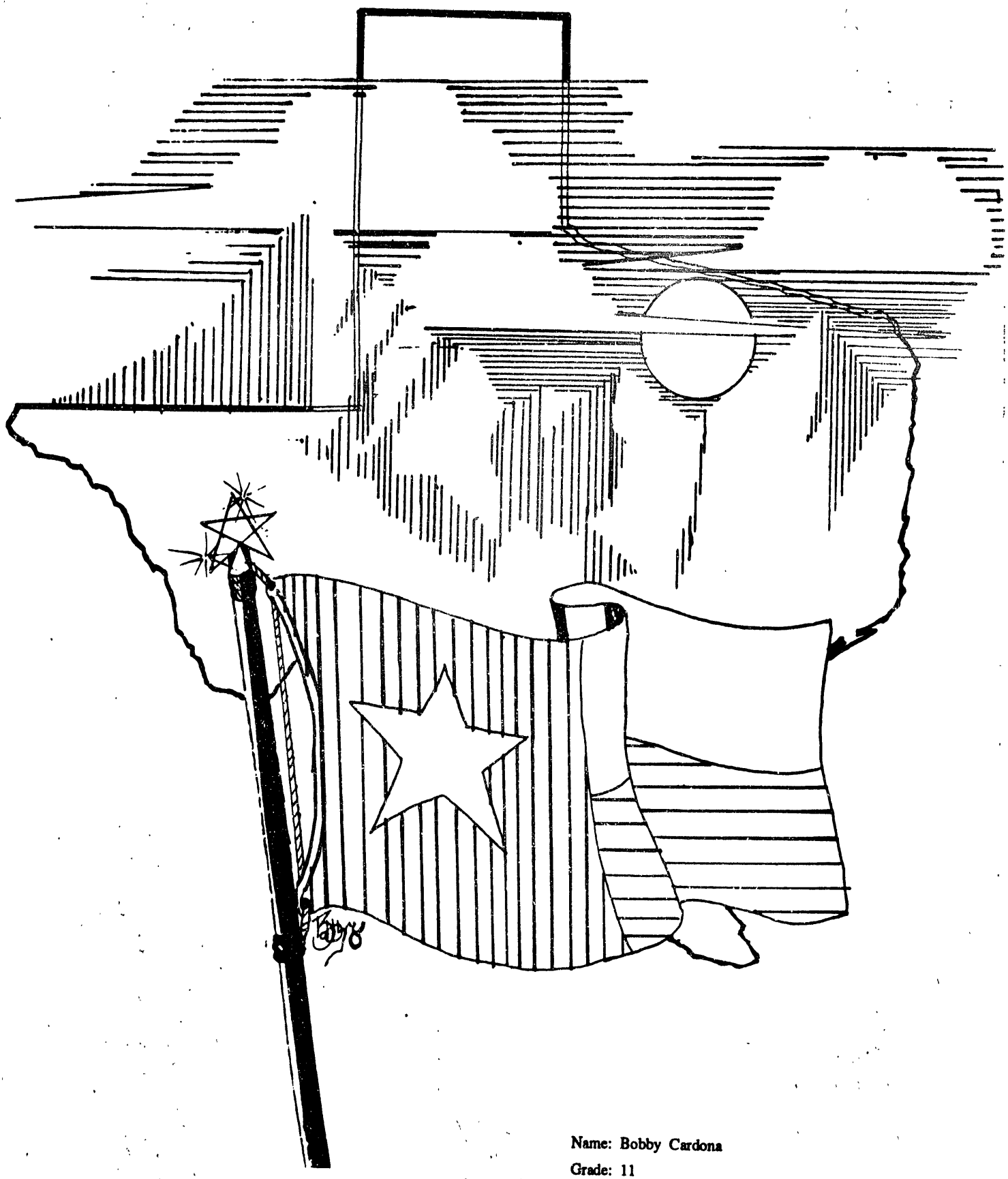
Members of the ADVISORY COMMITTEE shall serve without compensation. Expenses of ADVISORY COMMITTEE members will normally be expected to be paid by the agency, firm or organization represented by each member.

This executive order shall be effective immediately and shall remain in full force and effect until modified, amended, or rescinded by me.

Issued in Austin, Texas on January 9, 1988.

TRD-8904841 William P. Clements, Jr.
Governor of Texas

♦ ♦ ♦



Name: Bobby Cardona

Grade: 11

School: Holmes High, Northside

# 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.

## Open Records Decisions

**ORD-524 (RQ-1537).** Request from Ted J. Hajovsky, Jr., General Counsel, Texas A & M University System, College Station, concerning whether the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(14) and §14(e), prohibit disclosure of student records after student's death.

**Summary of Decisions.** The confidentiality accorded student records by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a and by the federal Family Education Rights and Privacy Act, 20 United States Code, §1232g, terminates upon the death of the student.

**TRD-8904837**

♦ ♦ ♦

## Opinions

**JM-1048 (RQ-1629).** Request from Robert Bernstein, Commissioner, Texas Department of Health, Austin, concerning whether documents which are excepted from disclosure under the Open Records Act, Texas Civil Statutes, Article 6252-17a, might nevertheless be available under Rule 167, Texas Rules of Civil Procedure, in an administrative hearing.

**Summary of Opinion.** The Open Records Act does not create privileges from discovery. Neither the Open Records Act, §3(a)(3) nor §3(a) (1) in conjunction with Texas Civil Statutes, Article 4442c, §16(h), protects the Texas Department of Health's investigatory records from civil discovery requests made by parties in the department's contested case hearings held under the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

**TRD-8904836**

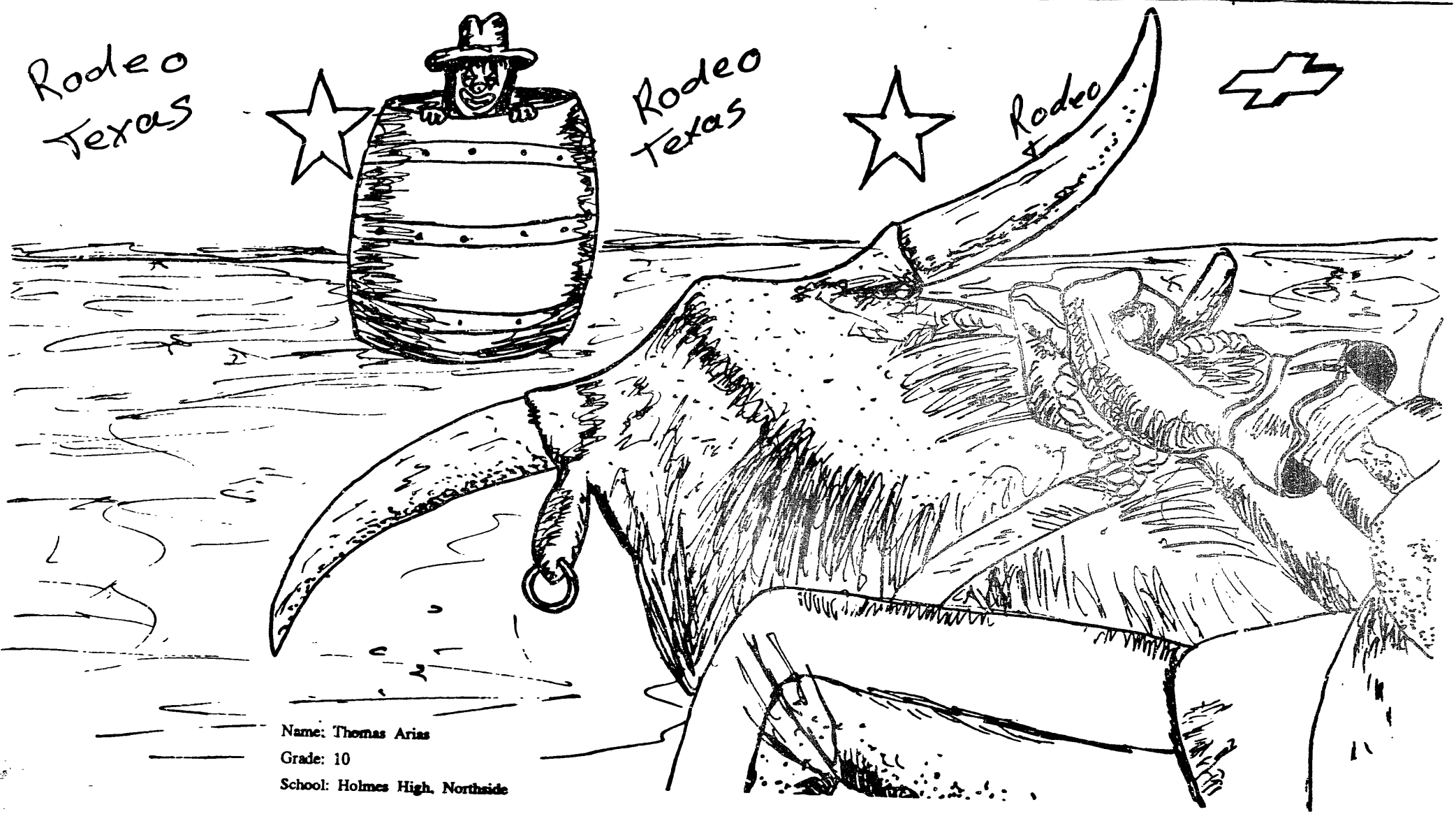
♦ ♦ ♦

**JM-1049 (RQ-1408).** Request from Garry Mauro, General Land Office, Austin, concerning whether real property belonging to the Permanent School Fund is exempt from property taxes when it is leased to a private business.

**Summary of Opinion.** The state's interest in real property comprising the permanent school fund is exempt from ad valorem taxation, even in the event that the property is leased to a private business enterprise. The leasehold estates inland comprising the permanent school fund are taxable to the lessees. If such a leasehold is terminated and taxes remain unpaid in the leasehold estate, the tax liability becomes a personal liability of the lessee who possessed the leasehold estate when the tax was imposed and the lien against the leasehold estate remains in force. Easements granted by the School Land Board in coastal and upland public lands that are dedicated to the permanent school fund are taxable pursuant to the Tax Code, §11.11 and §23.13; such easements must be appraised pursuant to the provisions of the Tax Code, §25.07.

**TRD-8904838**

♦ ♦ ♦




Name: Thomas Arias

Grade: 10

School: Holmes High, Northside

# 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 16. ECONOMIC REGULATION

## Part IV. Texas Department of Labor and Standards

### Chapter 65. Boiler Division

- **16 TAC §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, 65.100**

The Texas Department of Labor and Standards adopts on an emergency basis new §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 75.80, 65.90, and 65.100, concerning boilers. The entire chapter is adopted to replace the existing chapter, which is being simultaneously repealed on an emergency basis.

The new sections are adopted on an emergency basis to protect the safety, welfare, and health of boiler owner/users in Texas.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

*§65.1. Authority.* The sections in this chapter are promulgated under the authority of the Texas Boiler Law (Texas Civil Statutes, Article 5221c) .

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

Act or the Act–The Boiler Inspection Law.

Alteration–A change in a boiler that substantially alters the original design.

Approved–Approved by the commissioner.

ASME Code–The American Society of Mechanical Engineers Boiler and Pressure Vessel Code with addenda, code cases, and interpretations adopted by the council of the society.

Authorized inspector–Any inspector of boilers holding a commission issued by the commissioner pursuant to the Act, §10.

Board–The board of boiler rules.

Boiler–Any heating boiler, nuclear boiler, power boiler, or unfired steam boiler.

Certificate inspection–An inspection, the report of which is used by the chief inspector to decide whether or not a certificate of operation may be issued.

Certificate of operation–A certificate issued by the commissioner permitting the operation of a boiler.

Chief inspector–The inspector appointed in accordance with the Act, §8.

Code–ASME Code.

Commissioner–The commissioner of the Department of Labor and Standards of the State of Texas.

Condemned boiler–A boiler inspected and declared unfit for further service by the chief inspector, the deputy inspector, or the commissioner. Department–Texas Department of Labor and Standards.

Deputy inspector–An inspector appointed by the commissioner.

Electric boiler–A boiler in which the source of heat is electricity.

Existing installation–Any boiler constructed, installed, placed in operation, or contracted for before June 3, 1937.

External inspection–An inspection of the exterior of the boiler and its appurtenances made when a boiler is in operation, where possible.

Heating boiler–Any steam heating boiler, hot water heating boiler, hot water supply boiler, or lined potable water heater, which is directly fired with oil, gas, solar energy, electricity, coal, or other solid or liquid fuels.

High-temperature water boiler–A water boiler intended for operation at pressures in excess of 160 psi (1,103 kPa) and/or temperatures in excess of 250 degrees Fahrenheit (121 degrees Celsius).

Hot water heating boiler–A boiler for operation at a pressure not exceeding 160 psi and/or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet.

Hot water supply boiler–A boiler for operation at pressures not exceeding 160 psi and/or temperatures not exceeding 250 degrees Fahrenheit at or near the boiler outlet when any of the following limitations are exceeded: heat input of 200,000 Btu/hour; water temperatures of 210 degrees Fahrenheit; nominal water-containing capacity of 120 gallons (454.2 liters).

Inspection agency–An authorized inspection agency providing inspection services in accordance with the Act, §10.

Inspector–Chief inspector, deputy inspector, or authorized inspector.

Internal inspection–A complete and thorough inspection of the interior of the boiler where construction will permit.

Lined potable water heater–See potable water heater.

Major repair–A repair upon which the strength of the boiler will depend.

Miniature boiler–Any power boiler which does not exceed the following limits: 16-inch (406 mm) inside diameter of shell; 20-square-foot (1.86 square meter) heating surface (not applicable to electric boiler); five-cubic-foot gross (0.14 cubic meter) volume exclusive of casing and installation; 100 psi (689 kPa) maximum allowable working pressure.

National Board–The National Board of Boiler and Pressure Vessel Inspectors.

National Board Inspection Code–The manual for boiler and pressure vessel inspectors published by the National Board.

New installations–A boiler constructed, installed, or placed in operation after June 3, 1937.

Nonstandard boiler–A boiler that does not qualify as a standard boiler.

Nuclear boiler–A nuclear power plant system which produces and controls an output of thermal energy from nuclear fuel and those associated systems essential to the functions of the power system. The components of the system include such items as pressure vessels, piping systems, pumps, valves, and storage tanks.

Owner or user–Any person, firm, or corporation owning or operating boilers within the State of Texas.

Portable boiler–A boiler which is primarily intended for use in a temporary location.

Potable water heater–A boiler for operation at pressures not exceeding 160 psi and water temperatures not in excess of 210 degrees Fahrenheit when any of the following limitations is exceeded: heat input of 200, 000 Btu/hour; nominal water-containing capacity of 120 gallons.

Power boiler–A boiler in which steam is generated at a pressure in excess of 15 psi (103 kPa) or a high temperature water boiler.

Preliminary order–A written order issued by the chief inspector or any deputy inspector to require repairs or alterations to render a boiler safe for use or to require that operation of the boiler be discontinued.

Reinstalled boiler–A boiler removed from its original setting and reinstalled at the same location or at a new location with-

out change of ownership.

Repair–The work necessary to return a boiler to a safe and satisfactory operating condition without changing the original design.

Rules and regulations–The code of rules and regulations promulgated and enforced by the commissioner in accordance with the Act, §6.

Safety appliance–Safety devices such as safety valves or safety relief valves (within the jurisdictional limits of the boiler as prescribed by the ASME Code and the rules and regulations) provided for the purpose of diminishing the danger of accidents.

Secondhand boiler–A boiler of which both the location and ownership have changed.

Special inspection–An inspection by the chief inspector or deputy inspector other than those in Act, §§4, 4a, and 5.

Standard boiler–A boiler which bears a Texas stamp, the ASME stamp, or the stamp of any jurisdiction which has adopted a standard of construction equivalent to that required by the commissioner.

Steam heating boiler–A boiler for operation at pressures not exceeding 15 psi.

Unfired steam boiler–A steam generating system that includes vessels known as evaporators or heat exchangers; vessels in which steam is generated by the use of heat resulting from operation of a processing system containing a number of pressure vessels such as used in the manufacture of chemical and petroleum products, waste heat boilers.

*§65.20. Licensing/Certification/Registration Requirements.*

(a) Inspection of all boilers. All boilers not exempted by the Act, §3 or §3a, shall be inspected in accordance with the Act, §4, or with requirements specified under the applicable rules and regulations.

(b) Notice to owners or users of boilers.

(1) All boilers, unless otherwise exempted by the Act, shall be prepared for regular inspections, or hydrostatic tests, whenever necessary, by the owner or user when notified by the chief inspector, deputy inspector, or authorized inspector.

(2) The owner or user shall prepare each boiler, in accordance with §65. 70(h) of this title (relating to Responsibilities of the Licensee/Certificate Holder/Registrant), for an internal inspection and shall prepare for and apply the hydrostatic tests whenever necessary on the date specified by the chief inspector, deputy inspector, or authorized inspector. This date shall not be less than seven days after the date of notification.

(3) No inspection shall be made by the chief inspector or any deputy inspector on a Saturday, Sunday, or legal holiday except in case of an accident or other emergency.

(c) Registration.

(1) The procedure for an owner or user to follow in registering a boiler with the Texas Department of Labor and Standards shall be:

(A) at time of purchase, identify the items which make up the completed boiler and establish who will be responsible for documenting data on the various manufacturer's data report forms or the master data report form, as applicable. An engineering contractor with an "S" stamp can be the manufacturer;

(B) upon receipt of the manufacturer's data report forms, the owner or user shall notify the inspection agency that the initial inspection and the time for assigning and stamping the state number is imminent. The authorized inspection agency will register the boiler within 30 days of the owner or user notification. If there is no authorized inspection agency, the owner or user shall notify the department. The chief inspector will, within three working days of notification, remit a request for temporary operating permit. The chief inspector shall, within five working days of receipt of the completed request for temporary operating permit, respond to the owner or user and deputy inspector. The deputy inspector shall, within 30 days of receipt of the approved request, register the boiler;

(C) the owner or user shall apply to the Texas Department Labor and Standards for certification prior to any boiler operation. Application for certification is defined as the completed first inspection report. The authorized or deputy inspector shall file the application with the commissioner within 30 days of the inspection. Before the certification can be approved, the completed application and certificate/inspection fee must be received and accepted by the department;

(D) if any of the two components making up a complete boiler have not been registered with the National Board, the owner or user shall apply to the commissioner for a variance, before the components are delivered to the job site.

(2) Applicants may appeal any dispute arising from a violation of the time periods set for processing an application. An appeal is initiated by filing with the commissioner a letter explaining the time period in dispute. The letter of appeal must be received by the commissioner no later than 20 days after the date the dispute arose. The legal section will decide the appeal within 20 days of the receipt of the letter of appeal by the commissioner.

(d) External inspection. External inspections shall be perfonned as part of the application for an extension to the inspection interval in the Act, 4A. Otherwise, it shall be conducted in conjunction with the annual internal inspection required in the Act, §4.

(e) Extension of interval between internal inspections.

(1) For the interval between internal inspection to be extended as provided for in the Act, §4a, the following procedure must be followed:

(A) not less than 30 days prior to the expiration date of the current certificate, the owner or user shall submit to the commissioner, a separate request for each boiler, stating the desired length of extension, the date of the last internal inspection, and a statement certifying that records are available showing compliance with the statutory requirements;

(B) upon receipt of the owner's or user's request and statement that records have been kept as required by the Act, §4a, the commissioner shall confirm the records and ensure the extension period is not exceeded. The commissioner shall then notify the owner or user and the inspection agency having jurisdiction of the maximum extension period that may be approved;

(C) the inspection agency shall then review all records, make an external inspection, and submit to the commissioner, along with the external inspection report, a statement confirming compliance with the Act, §4a and the recommended extension period, not to exceed the approved maximum;

(D) upon completion of the above, a new certificate of operation may be issued for the extended period of operation, provided all fees have been paid as required by the Act.

(2) An additional extension for up to 120 days may be allowed as provided for in the Act, §4a, when it is established a emergency exists.

(A) Prior to the expiration date of the current certificate the owner or user shall submit to the commissioner a request stating an emergency exists with an explanation of the emergency and the date of the last internal inspection. The request shall be submitted along with the inspection agency's report of external inspection, confirming compliance with the Act, §4a, and the recommended period of extension.

(B) Upon receipt of the request and the accompanying report of external inspection, the commissioner shall confirm the records and ensure the extension requirements are met. The commis-

sioner shall then notify the owner or user and the inspection agency having jurisdiction, of the approved period of extension.

(C) Upon completion of the previously stated requirements, a new certificate of operation may be issued for the extended period of operation, provided all fees have been paid as required by the Act.

(f) Procedure for modification of or variation from, rules and regulations.

(1) Any person aggrieved by a rule, regulation, or decision of the commissioner may notify the commissioner of the grievance in writing, in accordance with The Boiler Inspection Law, §7, Texas Civil Statutes, Article 5221c.

(2) Upon failure of the commissioner to amend or repeal the fundamental rule, regulation, or decision, the aggrieved person may file an appeal pursuant to the Administrative Procedure and Texas Register Act, §12, or action for declaratory judgment to determine the validity or applicability of said rule, regulation, or decision of the commissioner within 30 days of the date of the hearing. The appeal or suit must be brought in the district court of Travis County, and not elsewhere.

(3) Any person or user may request a variation from a rule, regulation, or decision. The request for variation shall specify how the equivalent safety is to be maintained. The commissioner, after investigation and such hearing as he may direct, may, on his own motion, grant such variation from the terms of any rule, regulation, or decision.

(4) Decisions on grievances and variations shall become effective upon the dates the decisions are rendered, but must be rendered in writing.

(g) Examination for a commission. Deputy inspectors and authorized inspectors shall be qualified in accordance with the Act, §8 and §10, respectively.

(1) Deputy inspectors.

(A) The Texas commission examination is mandatory under the following conditions for:

(i) new issuance–inspectors applying for the initial issuance;

(ii) reinstatement–inspectors seeking reinstatement with a time lapse of more than 12 months.

(B) Examinations shall be scheduled by the chief inspector and held at the office of the Texas Department of Labor and Standards or any other location selected by the chief inspector.

(C) If the applicant is successful in obtaining a score of 70%, a commission will be issued by the commissioner.

(D) An applicant who fails to pass the examination will be permitted to take another examination after a suitable period of instruction determined by the chief inspector.

(2) Authorized inspectors.

(A) The Texas commission examination is mandatory under the following conditions for:

(i) new issuance–inspectors applying for the initial issuance who are not designated by the employing inspection agency to perform ASME Code new construction inspection only;

(ii) reinstatement–inspectors seeking reinstatement with a time lapse of 12 months or more without any type of inspection activity and are not designated by the employing inspection agency to perform ASME Code new construction inspections only.

(B) Application for examination for a commission as an inspector shall be in writing upon a form to be furnished by the commissioner stating the education of the applicant, a list of employers, period of employment, and position(s) held with each employer.

(C) Applicants for a commission shall submit with their initial application, an examination fee as required in §65.80(c) of this title (relating to Fees). This examination fee must be received by the department before an applicant can take the examination. An applicant who repeats the examination because of an unsuccessful first attempt shall submit an examination fee for each time the examination is repeated.

(D) If the applicant's qualifications meet the approval of the commissioner, he shall be given a written examination dealing with the construction, installation, maintenance, repair, and inspection of boilers.

(E) Examinations shall be scheduled by the chief inspector and held at the office of the Texas Department of Labor and Standards or any other location selected by the chief inspector.

(F) If the applicant is successful in obtaining a score of 70%, a commission will be issued by the commissioner.

(G) A commissioned inspector shall be issued an initial Texas Boiler Law, Rules and Regulations manual. To acquire additional manual, a standard publication fee will be assessed as required in §65.80(c) of this title (relating to Fees).

(H) An applicant who fails to pass the examination will be permitted to take another examination after a suitable period of instruction determined by the employing agency.

(I) The record of an applicant's examination shall be made accessible to the applicant and his employers.

(J) The examination fee cannot be refunded unless the applicant notifies the department that he will be unable to take the examination at least 10 days prior to the date thereof.

(h) Authority to set and seal safety appliances.

(1) All safety valves and safety relief valves must be repaired, tested, set, and sealed by one of the following:

(A) authorized safety valve and safety relief valve manufacturers, assemblers, or owner/users who have been granted authorization by the commissioner. Such authorization shall be granted only upon proof of competency on a form to be furnished by the commissioner and signed by an officer of the organization requesting the authorization; or

(B) safety valve and safety relief valve repair organizations that have been granted a certificate of authorization to use the official valve repair symbol (TVR) symbol stamp by the commissioner. Such authorization shall be granted only upon compliance with this subsection and implementation and demonstration of a written quality control system acceptable to the commissioner;

(C) authorization to use the stamp bearing the official valve repair symbol (TVR) as shown in Exhibit 1, Figure A (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address: P. 0. Box 12157, Austin, Texas 78711) will be granted by the commissioner pursuant to the provisions of this section.

(2) Repair organizations, manufacturers, assemblers or owner/users that make repairs to the American Society of Mechanical Engineers (ASME) Code symbol stamped safety valves and safety relief valves may apply to the Texas Department of Labor and Standards by completing the application form provided by the agency. The commissioner may, at any time with the advice of the board of boiler rules, make such regulations concerning the issuance

and use of such valve repair stamp. All such regulations shall become binding upon holders of valid TVR certificates of authorization.

(3) Authorization to use the valve repair stamp may be granted or withheld by the commissioner. Proceedings for denial, suspension, or revocation of a TVR certificate of authorization and appeals from those proceedings are governed by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13A. If authorization is granted and proper administrative fees as provided for in §65.80(b) of this title (relating to Fees) are paid, a TVR certificate of authorization will be issued evidencing permission to use such a symbol, expiring on the triennial anniversary date. The certificate shall indicate authorization to repair either ASME Section I or Section VIII valves or both, as verified by testing and as covered by the repair organization's quality control manual. The certificate will be signed by the commissioner and the chief inspector.

(A) Before issuance or renewal of a TVR certificate of authorization, the repair organization and its facilities are subject to a review and demonstration of its quality control system by a representative of the Boiler Section. It is the responsibility of the valve repair organization to make arrangements for this review. Wherever possible, Boiler Section reviews of valve repair organizations shall be coordinated with ASME and/or National Board reviews when applicable.

(B) The applicant should apply to the Boiler Section for renewal of authorization and reissuance of the certificate six months prior to the date of expiration.

(C) The TVR certificate of authorization is renewable every three years subject to a review of the quality control system by a representative of the Boiler Section.

(4) Each applicant shall agree, if authorization to use the TVR symbol stamp is granted, that the stamp is at all times the property of the Boiler Section, Texas Department of Labor and Standards, and will be promptly returned pursuant to the provisions of this paragraph. If the applicant discontinues the repair of such valves or, if the TVR certificate of authorization issued to such applicant has expired and no new certificate has been issued, the TVR symbol stamp will be returned to the Boiler Section.

(A) Each TVR symbol stamp shall be serialized and used only by the repair firm within the limitations and restrictions under which is was issued. The TVR symbol stamp shall be obtained only from the Texas Department of Labor and Standards, Boiler Section.

(B) A holder of a TVR symbol stamp shall not permit any others to use the stamp. When a repair organization, manufacturer, or user, has a repair department and/or equipment in plants or shops located in more than one geographical area, it must submit separate applications for each plant or shop and the addresses of all such repair locations. It may make the repairs in its plant, shop, or in the field, provided such operations are controlled by the plant or shop. TVR Certificates of authorization shall indicate if authorization is for shop or field repairs or both.

(C) When a valve repair organization changes location, a review of its facilities and quality control manual shall be required. When a valve repair organization changes ownership, a review may be required depending upon the nature and extent of revisions to repair procedures, change of personnel, and equipment as a result of the ownership change.

(D) The holder of a TVR certificate of authorization may obtain more than one TVR symbol stamp provided its quality control manual controls the use of such stamps from the locations shown in the TVR certificate of authorization. In such cases, the TVR certificate of authorization will indicate the serial numbers of each TVR symbol stamp which has been issued on loan to the repair organization.

(5) Before the TVR certificate of authorization and symbol stamp may be issued or renewed, two valves which have been repaired by the applicant at a fixed repair facility and selected by a Boiler Section representative must successfully complete operational verification tests as follows:

(A) perform visual examination to ensure the quality of material and workmanship;

(B) perform verification that critical parts meet the manufacturer's specifications. Critical parts that are replaced must be fabricated by the manufacturer to the manufacturer's specifications. Critical parts which require repair shall meet the manufacturer's specification;

(C) perform tightness test and verification;

(D) perform set pressure test and verification.

(6) The valve selection (e.g. one steam and one air or gas where steam and gas valves are repaired) shall be such as to cause a minimum disruption to the repair organization. However, the valves shall be typical of those repaired by the organization and within the capabilities of the repair organization. Tests conducted at the repair organization must be witnessed by a representative of the Boiler Section. The purpose of the tests are to ensure that the function and operation of the valves meet the requirements of the applicable section of the ASME Code to which they are manufactured. Should any of the valves fail to meet the applicable requirements, the tests shall be repeated on two valves for each valve that failed. Failure of any of these valves shall cause the applicant to investigate and document the cause of failure and state what corrective action has been taken to prevent future reoccurrence. Retest of the original valve is acceptable. Following proper implementation of this corrective action and after satisfactory performance, permission to receive the TVR certificate of authorization and symbol stamp will be granted.

(7) A manufacturer or a manufacturer's authorized assembler holding a valid ASME Certificate(s) of authorization for use of an ASME V and/or UV Code symbol stamp, may obtain the TVR certificate of authorization for the repair of ASME stamped safety and safety relief valves covered by his ASME certificate(s) of authorization. This can be accomplished without a review of the repair and test facilities provided there is a written quality control system to cover the scope of the repairs to be made and the repairs are carried out at the same location where the ASME valves are manufactured or assembled.

(A) If the repaired valves are not tested on the same facilities and to the same procedures as new valves, then a review of the facilities is required and two repaired valves shall be selected by a Boiler Section representative for verification and tests.

(B) Manufacturers or a manufacturer's authorized assembler making repairs to valves other than those covered by his ASME certificate(s) of authorization shall meet the qualifications for the TVR certificate of authorization as required elsewhere in these rules.

(C) The quality control manual is to be submitted for review and acceptance by the chief inspector. In order for an ASME Code symbol stamp holder to qualify for the TVR certificate of authorization and symbol stamp, the following areas to the written quality control system require attention:

(i) statement of authority and responsibility–this should clearly indicate that valve repairs are carried out in accordance with the requirements and the

rules of the Boiler Section. In addition, the scope and type of valve repairs covered by the manual should be indicated;

(ii) organization–unless the functions which affect the quality of valve repairs are carried out by the individuals other than those responsible for manufacturing or assembly, it should not be necessary to revise the organizational chart;

(iii) general quality control functions–usually quality control requirements regarding valve repairs may be controlled in the same manner as for ASME manufacturing or assembly, provided appli cable shop and/or field activities are covered. If this is the case, the applicant for the TVR certificate of authorization and symbol stamp should include in the quality control manual a separate section covering valve repairs which reference the applicable section of the manual.

(8) Repair of a safety and safety relief valve is considered to be the replacement, remachining or cleaning of any parts, lapping of seat and disc, or any other operation which may affect the flow passage, capacity, function, or pressure retaining integrity. Disassembly, assembly, and/or adjustments which affect the safety or safety relief valve function are also considered a repair. The initial installation, testing, and adjustments of a new safety valve or a safety relief valve on a boiler or pressure vessel are not considered a repair if made by the manufacturer or assembler of the valve.

(9) In general, the quality control system shall describe and explain what documents and procedures the repair firm will use to validate a valve repair. Before issuance or renewal of the TVR Certificate of authorization, the applicant must meet all requirements including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 2 (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701 or mailing address: P.O. Box 65 12157, Austin, Texas 78711).

(A) The written quality control system shall also include provisions for making revisions, posting and dating changes in parts, enabling the system to be kept current as required.

(B) The description and information of the system may be brief or voluminous, depending upon the circumstances and shall be treated confidentially.

(C) A review of the applicant's quality control system will be performed by a representative of the Boiler Section. The review will include a demonstration of the implementation of the provisions of the applicant's quality control system.

(D) Each applicant to whom a TVR certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the chief inspector. Except for changes which do not affect the quality control program, revisions to the quality control manual shall not be implemented until such revisions are accepted by the chief inspector.

(10) It is essential that valve repair organizations ensure that their personnel making repairs to safety and safety relief valves are knowledgeable and qualified. The repair organization shall provide for documented in-house training. Specific requirements to included in an individual's training are as follows:

(A) working knowledge of the organization's quality control manual;

(B) working knowledge of the pertinent portions of the latest edition of the applicable ASME Code;

(C) working knowledge of the manufacturer's technical bulletin for valves being repaired or tested.

(11) The courses offered by the National Board of Boiler and Pressure Vessel Inspectors and by the various manufacturers can be an invaluable training tool and the repair organizations are encouraged to utilize this means of training personnel.

(12) Test stands shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every 90 days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale range. Gages shall be used only in the upper 80% of full scale range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.

(A) Valves marked for general service or liquid service shall be set according to the applicable manufacturer's specification.

(B) Valves marked for steam service or having special internal parts for steam shall be preferably set on steam. ASME Section I valves set on air or set at pressures above the repair firm's steam testing capability shall be set on air or nitrogen, provided the valve manufacturer's recommendations concerning this test medium are followed and additional test and/or adjustments are made on steam after installation.

(C) ASME Section VIII valves for steam service may be tested on air for correct opening (popping), pressure setting and, if possible, blowdown adjustment, provided the valve manufacturer's corrections for differential in popping pressure between steam and air are applied to the popping point.

(D) Valves which are installed in such a manner that it makes it impractical to remove them from service and are repaired in place shall be tested to demonstrate set pressure and response to blowdown.

(E) A hydraulic or pneumatic device may be used to apply an auxiliary lifting load on the spring of a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases the manufacturer's recommendations shall be used to establish blowdown.

(13) Safety valve and safety relief valves discharging to atmosphere can create a high noise level. Consideration should be given either to appropriate silencers or individual ear protection. Likewise, the discharge blast can create safety hazards and should be considered.

(14) When a safety or safety relief valve is repaired, the TVR metal repair nameplate, as shown in Exhibit 1, Figure B (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 79701, or mailing address P.O. Box 12157, Austin, Texas 78711) marked with the information required shall be permanently attached to the valve. The preferred location for the nameplate is either above, adjacent to, or below the original nameplate or marking. On small valves, the TVR nameplate shall be securely attached to each valve with a corrosion resistant stainless steel or allow wire. The information on the TVR nameplate shall be that shown on Exhibit 1, Figure B (herein adopted by reference and which may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711) and include the name of the repair organization, TVR symbol stamp number, and the date of repair. The valve set pressure (PSIG), capacity, and the blowdown (for V stamped valves) shall be marked out, but left legible on the original nameplate or marking. The new capacity shall be based on that for which the valve was originally certified as published by the National Board of Boiler and Pressure Vessel Inspectors, publication NB-18 with the

applicable revision.

(15) When the information on the original manufacturer's or assembler's nameplate is missing or the marking is illegible, the nameplate or marking will be augmented by a nameplate furnished by the TVR Certificate of authorization holder marked "DUPLICATE" and "Section I" or "Section VIII" as applicable to indicate the original ASME Code stamping, which contains all information which originally appeared on the nameplate or marking of the valve, as required by the applicable section of the ASME code, except the V or UV symbol and the national board mark. The repair organization's TVR nameplate with serialized TVR symbol stamp and other required data will make the repair organization responsible to the Texas Department of Labor and Standards and the owner/user that the information on the "DUPLICATE" nameplate is correct. In all such cases where a "DUPLICATE" nameplate is furnished by the TVR Certificate of authorization holder, positive identification of the valve must be made. Otherwise the valve many not be repaired under the rules of the TVR program and the TVR Certificate of authorization holder is not authorized to attach a TVR symbol stamp or a TVR nameplate. Positive identification and verification of original V or UV symbol stamping shall be obtained and the source of the information shall be documented for that specific valve and the documentation maintained in the TVR certificate of authorization holder's records. This information may be obtained from the original manufacturer or assembler of the specific valve, or may be obtained from the owner/user's records that document the original ASME code stamping when the valve was originally purchased by the owner/user and/or original buyer of the valve.

(16) Field repairs are defined as any repair conducted outside a fixed repair shop location. Field repairs may be conducted with the aid of mobile facilities with repair capabilities with or without testing capabilities. Field repairs may be conducted in owner/user facilities without the use of mobile facilities.

(A) Organizations that obtain the TVR certificate of authorization for in-shop/plant repairs may also perform field repairs to safety and safety relief valves provided that:

(i) qualified technicians perform such repairs;

(ii) an acceptable quality control system covering field repairs is maintained;

(iii) all functions affecting the quality of the repaired valves are supervised from the location described on the TVR certificate of authorization; and

(iv) periodic audits of the work carried out in the field are made by quality control personnel of the TVR certificate of authorization holder to ensure that the requirements of the quality control system are met.

(B) Provided the previously mentioned provisions are met, verification testing of field repaired valves shall not be required.

(C) Organizations that perform field repairs only must demonstrate their field repair capabilities to a representative of the Boiler Section. Two valves (e.g. one steam and one air or one gas where steam and gas valves are repaired) must be repaired in the field and successfully complete operational verification tests as described in paragraph (5) of this subsection.

(D) A quality control manual, as required in paragraph (9) of this subsection, must be prepared describing all field repair activities.

(i) Conditions not covered. Any owner or user of boilers or any deputy inspector, authorized inspector, or interested party may submit in writing an inquiry to the commissioner for an opinion or clarification.

*§65.30. Exemptions.* The provisions of these rules shall not apply to those boilers exempted by the Act, §3 and §3a.

*§65.50. Reporting Requirements.*

(a) Manufacturer's data reports. Manufacturer's data reports shall be filed by the manufacturer with the chief inspector and the national board.

(b) Risks–new, canceled, or suspended.

(1) All inspection agencies shall promptly notify the chief inspector, on Form NB-4, of all boiler risks written, as well as all boiler risks rejected, canceled, not renewed, or suspended because of unsafe conditions. This notification shall list, by Texas boiler number, all objects affected by the notice.

(2) If an authorized inspector, upon the first inspection of a new risk, finds conditions such that his inspection agency refuses insurance, the inspection agency shall promptly notify the chief inspector and submit a report of the defects.

(c) Inspection report forms. At the time of the first inspection of any boiler covered by the provisions of the Act, a complete report (including safety or safety relief valve name plate data) shall be submitted on Form NB-5, or other appropriate form, provided by the Texas Department of Labor and Standards. Subsequent inspection reports shall be submitted on Form NB-6, or other appropriate form, as provided by the Texas Department of Labor and Standards. The reports shall be submitted within 30 days of the date of the inspection. External inspections shall be reported on Form NB-6, or other appropriate form, when hazardous conditions affecting the safety of the boiler are found to exist or to document the inspection required for extension of the internal inspection interval.

(d) Defective conditions disclosed at time of external inspection. If there is evidence of a leak or crack, the covering of the boiler shall be removed to satisfy the inspector as to the safety of the boiler. If the covering cannot be removed at that time, he may order the operation of the boiler discontinued until such time as the covering can be removed and proper examination made.

(e) Boiler accidents.

(1) In case of a serious accident, such as an explosion, the owner/user shall immediately notify the chief inspector and authorized inspector. Neither the boiler nor any of the parts thereof shall be removed or disturbed, except for the purpose of saving human life or preventing further damage, before an inspection and investigation has been made by the chief inspector, deputy inspector, or authorized inspector. The authorized inspector shall notify the chief inspector before beginning an inspection and investigation of serious boiler accidents.

(2) To the extent necessary to conduct an inspection and subsequent investigation of a boiler accident, the owner/user shall provide the chief inspector or deputy inspector free access to the boiler and accident area. The owner/user shall provide the chief inspector or deputy inspector and authorized inspector with fragments, parts, appurtenances, documents, and records necessary to conduct an investigation of the accident.

(3) The chief inspector shall investigate, or cause to be investigated, each boiler accident to the extent necessary to reasonably determine the cause of the boiler accident.

(4) The authorized inspector shall submit a report of the boiler accident to the chief inspector. The report shall be submitted on a form supplied by the department.

(5) The chief inspector shall file a final report detailing the cause for the boiler accident, including a recommendation to prevent a recurrence of a similar boiler accident.

(f) Repair and alteration report forms. All repairs and alterations to boilers falling within the scope of the National Board inspection code, or the Texas boiler inspection Law and Rules, must be reported to the Texas Department of Labor and Standards on approved National Board forms or

rules of the Boiler Section. In addition, the scope and type of valve repairs covered by the manual should be indicated;

(ii) organization–unless the functions which affect the quality of valve repairs are carried out by the individuals other than those responsible for manufacturing or assembly, it should not be necessary to revise the organizational chart;

(iii) general quality control functions–usually quality control requirements regarding valve repairs may be controlled in the same manner as for ASME manufacturing or assembly, provided applicable shop and/or field activities are covered. If this is the case, the applicant for the TVR certificate of authorization and symbol stamp should include in the quality control manual a separate section covering valve repairs which reference the applicable section of the manual.

(8) Repair of a safety and safety relief valve is considered to be the replacement, remachining or cleaning of any parts, lapping of seat and disc, or any other operation which may affect the flow passage, capacity, function, or pressure retaining integrity. Disassembly, assembly, and/or adjustments which affect the safety or safety relief valve function are also considered a repair. The initial installation, testing, and adjustments of a new safety valve or a safety relief valve on a boiler or pressure vessel are not considered a repair if made by the manufacturer or assembler of the valve.

(9) In general, the quality control system shall describe and explain what documents and procedures the repair firm will use to validate a valve repair. Before issuance or renewal of the TVR Certificate of authorization, the applicant must meet all requirements including an acceptable written quality control system. The basic elements of a written quality control system shall be those described in Exhibit 2 (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701 or mailing address: P.O. Box 65 12157, Austin, Texas 78711).

(A) The written quality control system shall also include provisions for making revisions, posting and dating changes in parts, enabling the system to be kept current as required.

(B) The description and information of the system may be brief or voluminous, depending upon the circumstances and shall be treated confidentially.

(C) A review of the applicant's quality control system will be performed by a representative of the Boiler Section. The review will include a demonstration of the implementation of the provisions of the applicant's quality control system.

(D) Each applicant to whom a TVR certificate of authorization is issued shall maintain thereafter a controlled copy of the accepted quality control manual with the chief inspector. Except for changes which do not affect the quality control program revisions to the quality control manual shall not be implemented until such revisions are accepted by the chief inspector.

(10) It is essential that valve repair organizations ensure that their personnel making repairs to safety and safety relief valves are knowledgeable and qualified. The repair organization shall provide for documented in-house training. Specific requirements to be included in an individual's training are as follows:

(A) working knowledge of the organization's quality control manual;

(B) working knowledge of the pertinent portions of the latest edition of the applicable ASME Code;

(C) working knowledge of the manufacturer's technical bulletin for valves being repaired or tested.

(11) The courses offered by the National Board of Boiler and Pressure Vessel Inspectors and by the various manufacturers can be an invaluable training tool and the repair organizations are encouraged to utilize this means of training personnel.

(12) Test stands shall be of a size and design to ensure clean, consistent, and repetitive pop action and response to blowdown adjustment. Test gages shall be connected to the test stand in such a manner as to indicate true pressure at the inlet of the valve being tested. Test gages shall be maintained and calibrated, at least every 90 days, to a minimum of one-half of 1.0% accuracy over the upper 80% of full scale range. Gages shall be used only in the upper 80% of full scale range. The use of digital gages is acceptable. All calibrations shall be documented and traceable to national standards.

(A) Valves marked for general service or liquid service shall be set according to the applicable manufacturer's specification.

(B) Valves marked for steam service or having special internal parts for steam shall be preferably set on steam. ASME Section I valves set on air or set at pressures above the repair firm's steam testing capability shall be set on air or nitrogen, provided the valve manufacturer's recommendations concerning this test medium are followed and additional test and/or adjustments are made on steam after installation.

(C) ASME Section VIII valves for steam service may be tested on air for correct opening (popping), pressure setting and, if possible, blowdown adjustment, provided the valve manufacturer's corrections for differential in popping pressure between steam and air are applied to the popping point.

(D) Valves which are installed in such a manner that it makes it impractical to remove them from service and are repaired in place shall be tested to demonstrate set pressure and response to blowdown.

(E) A hydraulic or pneumatic device may be used to apply an auxiliary lifting load on the spring of a valve for testing purposes and/or making adjustments. Calibrated testing equipment shall be used and detailed testing procedures followed. In such cases the manufacturer's recommendations shall be used to establish blowdown.

(13) Safety valve and safety relief valves discharging to atmosphere can create a high noise level. Consideration should be given either to appropriate silencers or individual ear protection. Likewise, the discharge blast can create safety hazards and should be considered.

(14) When a safety or safety relief valve is repaired, the TVR metal repair nameplate, as shown in Exhibit 1, Figure B (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 79701, or mailing address P.O. Box 12157, Austin, Texas 78711) marked with the information required shall be permanently attached to the valve. The preferred location for the nameplate is either above, adjacent to, or below the original nameplate or marking. On small valves, the TVR nameplate shall be securely attached to each valve with a corrosion resistant stainless steel or allow wire. The information on the TVR nameplate shall be that shown on Exhibit 1, Figure B (herein adopted by reference and which may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711) and include the name of the repair organization, TVR symbol stamp number, and the date of repair. The valve set pressure (PSIG), capacity, and the blowdown (for V stamped valves) shall be marked out, but left legible on the original nameplate or marking. The new capacity shall be based on that for which the valve was originally certified as published by the National Board of Boiler and Pressure Vessel Inspectors, publication NB-18 with the

other approved forms provided by the department within 90 days following the repair or alteration.

*§65.60. Responsibilities of the Department.*

(a) Inspector's duties. Inspectors shall be regularly employed as an inspector and shall not engage in the sale of any article or device relating to boilers, pressure vessels, or other appurtenances.

(b) Commissions.

(1) Deputy inspectors.

(A) A commission as a deputy inspector and an identifying commission card shall be issued by the commissioner to an inspector who has successfully passed the examination as set forth in §65.20(g) of this title (relating to Licensing/Certification/Registration Requirements). The identifying commission card shall be returned to the commissioner when the inspector to whom the commission was issued is no longer employed by the department.

(B) If a commission and/or identifying commission card is lost or destroyed, a replacement shall be issued without examination upon request.

(C) Annual renewal of a commission shall be accomplished by the department and a new identifying commission card will be issued.

(D) In lieu of the examination provided for in §65.20(g) of this title (relating to Licensing/Certification/Registration Requirements), a commission may be issued to an inspector holding a certificate of competency as an inspector of boilers and pressure vessels for a jurisdiction that has a standard written examination substantially equal to that of the State of Texas.

(2) Authorized inspector.

(A) Upon the request of a boiler insurance company, authorized to do business in this state, a commission as an authorized inspector and an identifying commission card shall be issued by the commissioner to an inspector in the employ of such insurance company provided the inspector has successfully passed the examination as set forth in §65.20(g) of this title (relating to Licensing/Certification/Registration Requirements). The identifying commission card shall be returned to the commissioner when the inspector to whom the commission was issued is no longer in its employ. An inspector, commissioned as provided in this section, shall be entitled to another commission upon leaving the employ of one insurance company authorized to insure boilers in this state and entering the employ of another such company without examination, provided the commissioner is notified immediately of such reemployment and provided that a commission reinstatement fee and new application are submitted.

(B) If a commission and/or identifying commission card is lost or destroyed, a replacement shall be issued without examination upon request and receipt of the replacement fee as stated in §65.80(c) of this title (relating to Fees).

(C) Annual renewal of a commission is required and shall be received by the department not less than 30 days prior to the expiration date. Upon receipt of a written request and the renewal fee as stated in §65.80(c) of this title (relating to Fees), a new identifying commission card will be issued. Renewal requests received after December 31 will be assessed a late renewal fee as stated in §65.80(c) of this title (relating to Fees). Commissions not renewed by January 31 will be placed in inactive status.

(D) In lieu of the examination provided for in §65.20(g) of this title (relating to Licensing/Certification/Registration Requirements), a commission may be issued to an inspector holding a certificate of competency as an inspector of boilers and pressure vessels for a jurisdiction that has a standard written examination substantially equal to that of the State of Texas.

(E) Written requests for new issuances, renewals, or reinstatements will specify if the scope of work to be performed will be ASME code inspections only.

(c) Assignment of boiler numbers and identification.

(1) Texas boiler numbers shall be issued as a decal to all inspection agencies and deputy inspectors as requested in writing. Only numbers issued by the chief inspector shall be assigned to boilers. Only the official decal and corrosion-resistant metal tags supplied by the chief inspector may be used. Only one Texas boiler number shall be assigned to a boiler. Reassignment of Texas boiler numbers shall be made with the approval of the chief inspector.

(2) During the first inspection of all boilers, the inspector shall stamp, except as provided for in paragraph (3) of this subsection, the Texas boiler number as near to the original American Society of Mechanical Engineers (ASME) code symbol stamping and required information as practicable. All numbers shall be given on the first inspection report, including the National Board registration number and manufacturer's serial number. The stamping shall consist of the letters TX and directly below the TX shall be stamped the Texas boiler number with a five point star stamped immediately adjacent to the first and last digit of the Texas boiler number. All stamping shall be accomplished by low stress steel dies 5/16" high. The stamping shall be arranged as shown in Exhibit 3 (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711). In addition, the corrosion-resistant metal tag shall be applied, as permanently as practicable, to the external jacket or other covering where the surface temperature exceeds 200 degrees Fahrenheit, or the Texas boiler number decal shall be applied where the surface does not exceed 200 degrees Fahrenheit The tag or decal shall be located on the boiler so that identification is easily obtained from the most accessible operating control side or information label side.

(3) Lined water heaters ASME code symbol stamped HLW, cast iron sectional boilers, water tube boilers with cast headers, and other types of boilers that will be damaged by direct impression stamping are exempt from the stamping requirements of this paragraph (2) of this subsection. These boilers shall be identified with the Texas boiler number decal or corrosion-resistant tag as described in subsection (b) of this section.

(4) The Texas boiler number or other boiler identifying numbers shall not be concealed by lagging or paint.

(5) No person except the chief inspector or deputy inspector shall deface or remove such numbers, except as approved by the chief inspector.

(d) Condemned boilers.

(1) Any boiler, stamped or identified with the corrosion-resistant metal tag, having been inspected and declared unsafe by the chief inspector or deputy inspector, shall be stamped by the inspector, with an X on the star on either side of the Texas boiler number, as shown by the following facsimile, which will designate a condemned boiler:

(2) Any boiler, identified with the Texas boiler number decal, having been inspected and declared unsafe by the chief inspector or deputy inspector, shall be altered by the inspector by removing the star on either side of the Texas boiler number, as shown in Exhibit 4 (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711). This will designate a condemned boiler.

(e) General safety. If, in the judgment of the inspector, a boiler is unsafe for operation at the pressure previously approved, the pressure shall be reduced and proper repair made, or the boiler shall be removed from service.

(f) Conditions not covered by rules and regulations. All conditions not specifically covered by these requirements shall be treated as new installations or be referred to the chief inspector for instruction.

*§65.70. Responsibilities of the Licensee/Certificate Holder/Registrant.*

(a) New installations.

(1) No boiler, except reinstalled boilers and those exempted by the Act, shall be installed in this state unless it has been constructed, inspected, and stamped in conformity with the applicable section of the ASME code and registered with the National Board of Boiler and Pressure Vessel Inspectors, and is approved, registered, and inspected in accordance with the requirements of these rules and regulations. Cast iron sectional boilers need not be registered with the national board.

(2) A boiler having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of the State of Texas, or a special-designed boiler, may be accepted by the commissioner. Any person desiring to install such a boiler shall make application for the installation and shall file with this application the manufacturer's data report covering the construction of the boiler in question.

(3) New boilers, including reinstalled boilers, shall be installed in accordance with the requirements of the latest revision of the applicable section of the ASME code and these rules and regulations.

(4) Secondhand boilers shall meet all the requirements for new installations, including code construction and stamping requirements.

(b) Existing installations.

(1) The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME code under which they were constructed and stamped.

(2) In no case shall the maximum allowable working pressure of an existing nonstandard boiler be increased to a greater pressure than would be allowed for a new boiler of same construction.

(3) The age limit of any boiler of nonstandard construction installed prior to the date this law became effective shall be 30 years, except that after a thorough internal and external inspection and hydrostatic pressure test of 1-1/2 times the allowable working pressure and held for a period of at least 30 minutes, during which no distress or leakage develops, any boiler having other than a lap-riveted longitudinal joint may be continued in operation without reduction in working pressure. The age limit of any nonstandard boiler having lap-riveted longitudinal joints and operating at a pressure in excess of 50 psi shall be 20 years; this type of boiler, when removed from the existing setting, shall not be reinstalled for a pressure in excess of 15 psi; and a reasonable time for replacement shall be given at the discretion of the commissioner.

(4) A nonstandard boiler now in use in this state, if removed outside the boundaries of the state, cannot be brought in and reinstalled. Shipment of nonstandard boilers into this state for use is prohibited.

(5) In any case where a boiler is moved and reinstalled, the fittings and appliances must comply with the ASME code.

(6) The maximum allowable working pressure on the shell of an existing steam heating boiler shall not exceed 15 psi. For a hot water heating boiler, the working pressure shall not exceed 160 psi or a temperature of 250 degrees Fahrenheit The maximum allowable working pressure on the shell of an existing riveted heating boiler shall be determined in accordance with the National Board Inspection Code covering existing installations for riveted boilers.

(c) Attendance on boilers. A boiler in operation shall be under the supervision of and checked at suitable intervals by a competent attendant, regardless of whether or not it is equipped with automatic feed water regulator, fuel and damper regulator, high-and-low-water alarm, or any other form of automatic control. A competent attendant shall be a person who is familiar with the operation of the boiler and who has been properly instructed in its safe operation.

(d) Care of boiler room.

(1) The boiler room shall be free from accumulation of rubbish and materials that obstruct access to the boiler, its setting, or firing equipment.

(2) The storage of flammable material or gasoline-powered equipment in the boiler room is prohibited.

(3) The roof over boilers designed for indoor installations shall be free from leaks and maintained in good condition.

(4) Adequate drainage shall be provided.

(5) All exit doors shall open outward. Two or more exits remote from each other should be provided.

(6) It is recommended that the ASME Code, Section VI covering recommended rules for the care and operation of heating boilers be used as a guide for proper and safe operating practices.

(7) It is recommended that the ASME Code, Section VII recommended rules for care and operation of power boilers, be used as a guide for proper and safe operating practices.

(e) Foundations and levels.

(1) All boilers shall be kept reasonably level and must be provided with a substantial foundation such as steel, concrete, brick, or stone. The boiler mud rim or bottom of a vertical boiler setting shall not be less than six inches from the ground. The locomotive-type boiler mud rim or wet bottom shall have the foundation of its setting not less than 12 inches from the floor or ground. All boiler mud rims shall be accessible to the inspector.

(2) Boilers that are not level and

do not have substantial foundations may be removed from service until such provisions are provided.

(3) Supports for boilers shall be masonry or structural steel of sufficient strength and rigidity to safely support the boiler. There shall be no vibration in either the boiler or its connecting piping.

(f) Clearance.

(1) All boilers and their appurtenances shall be so located that adequate space will be provided for the proper operation, inspection, maintenance, and repair.

(2) A minimum clearance of two feet shall be maintained on all sides of a boiler except portable boilers and potable water heaters. A minimum of four feet shall be maintained between top of a boiler and roof joist. A minimum of one foot shall be maintained between the bottom of scotch-type boilers and the foundation or floor.

(g) Safety appliances.

(1) General. No one shall remove (except temporarily for repair), fail to replace after removal, displace, damage, destroy, carry off, tamper with, or fail to use any safety appliance. When the safety appliance has been removed for repairs and the seal broken, such appliance shall not be replaced on the boiler until it is in proper working order. Such appliance shall not be set at a pressure in excess of the working pressure stated on the certificate of operation. The seal shall be replaced prior to returning the boiler to service.

(2) Dismantled boiler. When a boiler is dismantled or moved, all safety appliances must conform to the requirements governing new installations prior to a return to service.

(h) Preparation for inspection.

(1) The owner or user shall prepare a boiler for internal inspection in the following manner.

(A) Water shall be drawn off and the boiler thoroughly washed.

(B) All manhole and handhole plates, washout plugs, and plugs in water column connections shall be removed as necessary for complete inspection. The furnace and combustion chambers shall be thoroughly cooled and cleaned.

(C) All grates of internally fired boilers shall be removed.

(D) Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, headers, furnace, supports, or other parts.

(E) The pressure gage shall be removed for cleaning of the siphon and testing, if necessary.

(F) The low-water cutoff device shall be dismantled, cleaned, and prepared for inspection.

(G) Before removing the manhole or handhole covers and entering any part of the boiler connected to a common header with other boilers any leakage of steam or hot water shall be eliminated. The nonreturn and stop valves must be closed, tagged, and preferably padlocked, and drain valves between the two valves opened. The feedwater valves must be closed, tagged, and preferably padlocked. After draining the boiler, the blowdown valves shall be closed and preferably padlocked. Blowdown lines, where practicable, shall be disconnected between pressure parts and valves. All vent and drain lines shall be opened.

(2) If the boiler is jacketed so that the seams of shells, drums, or domes cannot be seen, enough of the jacketing, setting wall, or other form of casing or housing shall be removed to permit inspection to determine the safety of the boiler, provided such information cannot be determined by other means.

*§65.80. Fees.*

(a) Certificate/Inspection Fees.

(1) Inspection by authorized inspector. The owner or user or his/her agent shall make a $15 payment for the certificate of operation fee to the boiler section, Texas Department of Labor and Standards, as required in the Act, §5.

(2) Inspection by deputy inspector. The owner or user shall make payment of the appropriate fee as shown below.

(A) The inspection fees for all boilers other than heating boilers shall be:

(i) those with a heating surface of 50 square feet (4.65 square meters) or less–$60;

(ii) those with a heating surface greater than 50 square feet (4.65 square meters) but not greater than 100 square meters)–$70;

(iii) those with a heating surface greater than 100 square feet (9.29 square meters) but not greater than 500 square feet (46.45 square meters)–$85;

(iv) those with a heating surface greater than 500 square feet (46.45 square meters) but not greater than 1,500 square feet (139.35 square meters) –$100; and

(v) those with a heating surface greater than 1,500 square feet (139.35 square meters)–$140.

(B) The inspection fees for heating boilers shall be:

(i) those without a manhole–$60; and

(ii) those with a manhole–$90.

(C) Such fees must be paid in full before a certificate of operation will be issued.

(b) Special inspections. The fee for a special inspection is $250 for four hours or less and $400 for greater than four hours and including eight hours. In addition to the fees stated in this section, travel and per diem in accordance with the current rate as established in the current Appropriations Act shall be paid. A prepayment of $600 shall be received by the department at least five working days before the department can initiate the requested special inspection. If the total billing from the department is less than $600, any overage will be refunded. If the total amount due exceeds $600, an invoice for the unpaid balance will be submitted for payment. Prepayment shall be made by certified check or money order made payable to the Texas Department of Labor and Standards, Boiler Section.

(c) Commission fees.

(1) Exam–$25, Re-exam–$25.

(2) New $25 renewal–$10, and late renewal–$12.50.

(3) Reinstatement–$25.

(4) Replacement:

(A) certificate only–$10;

(B) identifying commission card only–$10;

(C) certificate and identifying commission card–$25; and

(D) boiler law, rules, and regulations–$12.

*§65.90. Sanctions.*

(a) Penalties. Any person, firm, partnership, or corporation using or offering for sale a condemned boiler for operation within this state shall be subject to the penalties provided in the Act, §13.

(b) Boilers improperly prepared for inspection or test. If a boiler has not been properly prepared for an internal inspection or a hydrostatic test as set for the in these sections, the inspector may decline to make the inspection or witness the test, and the certificate of operation shall be withheld until the owner or user complies with all requirements.

(c) Suspension or revocation of a commission.

(1) An inspector's commission may be suspended or revoked by the commissioner after due investigation and hearing for the inspector's incompetence, untrustworthiness, or willful falsification in his application or in an inspection report made by him or others. Written notice of any hearing shall be given by the commissioner at least 10 days prior thereof to the inspector and his employer. A person whose commission is challenged is entitled to a hearing before the commissioner, and to be present in person at the administrative hearing and may be represented by counsel at the hearing. Each party to a hearing shall be afforded the full protection of all due process of law at the hearing and in any appeal. Each part of all hearings shall be held in compliance with the Administrative Procedure and Texas Register Act.

(2) A person whose commission has been suspended is entitled to apply for reinstatement after 90 days from the date of such suspension. Any commission that is revoked shall be treated as a new application for a commission and can be filed no sooner than one year after the effective date of revocation.

*§65.100. Technical Requirements.*

(a) Ventilation.

(1) The boiler room must have an adequate and uninterrupted air supply to assure proper combustion and ventilation.

(2) The combustion and ventilation air may be supplied by either an unobstructed opening or by power ventilators or fans.

(3) The opening shall be sized on the basis of one square inch of free area for each 2,000 Btu/hour input of the combined burners located in the boiler room.

(4) The power ventilator or fans shall be sized on the basis of 0.2 cfm. for each 1,000 Btu/hour fuel input for the combined burners located in the boiler room.

(5) The boiler and the fans shall be interlocked so that the burners will not operate unless the fans are in operation.

(b) Location of discharge outlets. The discharge of safety valves and safety relief valves, blowdown pipes, and other outlets shall be located to prevent injury to personnel.

(c) Low-water fuel cutoffs and water feeding devices.

(1) All automatically-fired steam boilers, except boilers having a constant attendant, who has no other duties while the boiler is in operation, shall be equipped with approved low-water fuel cutoffs installed in such a manner that they cannot be rendered inoperative by the manipulation of any manual control or regulating apparatus. The low-water fuel cutoff devices shall be tested regularly by lowering the water level in the boiler sufficiently to shut off the fuel supply to the burner when the water level reaches the lowest safe level for operation.

(2) When a low-water fuel cutoff and feedwater pump control are combined in a single device, an additional separate low-water fuel cutoff shall be installed. The additional control shall be wired in series electrically with the existing low-water fuel cutoff.

(3) When a low-water fuel cutoff is housed in either the water column or a separate chamber it shall be provided with a blowdown pipe and valve not less than 3/4 inch pipe size. The arrangement shall be such that when the water column is blown down, the water level in it will be lowered sufficiently to activate the low-water fuel cutoff device.

(4) All newly installed automatically fired hot water heating boilers, when installed in a forced circulation system and not under continuous attendance, shall be equipped in the manner described this subsection and subsections (a)-(b) of this section. A coil-type boiler or a water-tube boiler requiring forced circulation to prevent overheating of the coils or tubes shall have a device which is listed by a nationally recognized testing agency to prevent burner operation at a flow rate inadequate to protect the boiler unit against overheating.

(5) As there is no normal water line to be maintained in a hot water heating boiler, any location of the low-water fuel cutoff above the lowest safe water level established by the boiler manufacturer is satisfactory.

(6) If a water feed device is utilized, it shall be constructed to prevent feedwater from entering the boiler through the water column or separate chamber of the low-water fuel cutoff.

(d) Electric steam generators.

(1) A cable at least as large as one of the incoming power lines to the generator shall be provided for grounding the generator shell. This cable shall be permanently fastened on some part of the generator and shall be grounded in an approved manner.

(2) A suitable screen or guard shall be provided around high-voltage bushings, and a sign posted warning of high voltage. This screen or guard shall be so located that it will be impossible for anyone working around the generator to accidentally come in contact with the high voltage circuit.

(3) In electric boilers of the submerged-electrode type, the water gage glass shall be located to indicate the water levels both at start-up and under maximum load conditions as established by the manufacturer.

(4) In electric boilers of the resistance-heating-element type, the lowest visible part of the water gage glass shall not be below the top of the electric resistance heating element. Each boiler of this type shall be equipped with an automatic low-water electric power cutoff to automatically disconnect the power supply before the surface of the water falls below the top of the electrical resistance heating elements.

(5) Tubular water glasses on electric boilers having a normal water content not exceeding 100 gallons shall be equipped with a protective shield.

(6) The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3 1/2 pounds (1.6 Kg.) of steam per hour per kilowatt input.

(e) Unfired steam boilers.

(1) Some examples of the unfired steam boilers referred to in §65.10 of this title (relating to Definitions), are shown in Exhibits 5A and 5B (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Division, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711) of the rules and regulations of the Texas Department of Labor and Standards, Boiler Section. The limits are defined as the first blinding point, circumferential welded joint, threaded joint, or flanged joint in the piping connected to the vessel in which the water is converted into steam. The safety devices, gages, gage glasses, and similar devices attached to the vessel shall also be included within these limits.

(2) Unfired steam boilers as shown on Exhibits 5A and 5B (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Division, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711) of the rules and regulations of the Texas Department of Labor and Standards, Boiler Section, shall be constructed in accordance with ASME Section I or Section VIII, Division 1.

(f) Potable water heaters, unique requirements.

(1) Stop valves should be placed in the supply and discharge pipe connections of a water heater installation to permit draining the heater without emptying the system.

(2) Each heater shall have a bottom drain pipe connection fitted with a valve or cock connected to the lowest water space practicable. The minimum size bottom drain shall be 3/4 inch.

(3) Each water heater shall have a thermometer located and connected at or near the outlet that is easily readable. The thermometer shall at all times indicate the

temperatures of the water in the hot water heater.

(4) When the water supply to a water heater exceeds 75% of the design pressure of the heater, a pressure-reducing valve shall be required.

(g) Nuclear boilers.

(1) Nuclear boilers shall be inspected inservice by the owner or user in accordance with American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code, Section XI.

(2) The owner or user shall engage the services of an authorized inspection agency, qualified in accordance with American National Standards Institute/American Society of Mechanical Engineers (ANSI/ASME) N626.1, licensed by the Texas State Board of Insurance, and authorized to provide inspection services by the commissioner.

(3) The chief inspector shall assign, after receipt of the completed N-3 Owner's Data Report, a state serial number to the nuclear boiler.

(A) All N-5 data reports for piping systems and N-3 owner's data reports shall be filed with the chief inspector.

(B) National board registration described in §65 50(a) of this title (relating to Reporting Requirements) or §65.20(c)(1)(D) of this title (relating to Licensing/Certification/Registration Requirements) is not required.

(4) The certificate of operation will be issued after receipt of the preservice inspection summary report and prior to commercial service. The summary report shall include all activities required by ASME, Code, Section XI, except for the results of examinations or test of items obtainable only during power ascension testing. These items shall be filed as an amendment to the summary report within 60 days of the completion of the power ascension testing. The items identified to be submitted in the amendment shall be agreed upon by mutual consent as provided for in paragraph (11) of this subsection prior to power ascension testing and issuance of the certificate of operation.

(5) The inservice inspection plan shall be submitted to the chief inspector by the owner or user prior to commercial service.

(6) The chief inspector shall review the inservice inspection plan and select those items necessary to verify compliance with the Texas Boiler Law (Texas Civil Statutes, Article 5221C) and ASME Code Section XI. Items selected for verification shall be from within the verification boundary of the nuclear boiler consisting of the components and component supports of the systems illustrated in Exhibit 6 (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711)

(7) The chief inspector shall, upon reasonable notification by the owner or user of inservice inspection activities to be accomplished during any outage on items selected in subsection (f) of this section coordinate with the owner or user the verification activities.

(8) The chief inspector shall review and maintain summary reports of the inservice inspections that are submitted by the owner or user in accordance with ASME Code, Section XI.

(9) Repairs and/or replacements shall conform to the requirements of ASME Code, Section XI.

(10) The owner or user shall, in case of serious accidents to a nuclear boiler involving a breach of the pressure boundary integrity of components included in Exhibit 6 (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711), immediately notify the chief inspector by the most expeditious means available and apprise him of the nature of the accident. The chief inspector shall assess the nature of the accident, formulate inspection activities as required, and coordinate these activities with the owner or user and as necessary with other state and federal agencies having jurisdiction.

(11) If exceptions or situations arise which are not specifically addressed in this section or other sections of the Boiler Law and Rules and Regulations, or in ASME Code Section XI, the owner or user shall contact the chief inspector for guidance or interpretation.

(h) Power boilers.

(1) Safety valves and safety relief valves.

(A) The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, is prohibited.

(B) Each boiler shall have at least one safety valve and, if it has more than 500 square feet of water heating surface or has an electric power input more than 1,100 kilowatts, it shall have two or more safety valves.

(C) The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as practicable to the boiler without unnecessary intervening pipe or fittings.

(D) No valves of any description shall be placed between the required safety valve or safety relief valve or valves and the boiler, except for unfired steam as shown in Exhibit 5A and 5B (herein adopted by reference and which exhibit may be secured from the Texas Department of Labor and Standards, Boiler Section, 920 Colorado Street, Austin, Texas 78701, or mailing address P.O. Box 12157, Austin, Texas 78711), nor on the discharge pipe between the safety valve or safety relief valve and the atmosphere. When a discharge pipe is used, it shall be at least full [illegible] of the safety valve discharge and fitted [illegible] a open drain to prevent water lodging in the upper part of the safety valve or discharge pipe. When an elbow is placed on a safety valve discharge pipe, it shall be located close to the safety valve outlet. The discharge pipe shall be securely anchored and supported. All safety valve or safety relief valve discharges shall be located or piped to be carried to a safe point of discharge clear from walkways or platforms used for access to main stop valves of boiler or steam header.

(E) The safety valve capacity of each boiler must allow the safety valve or valves to discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and to no more than 6.0% above the maximum allowable working pressure.

(F) One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3.0% above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

(G) When two or more boilers operating at different pressures and safety valve settings are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

(H) In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boilers.

(I) If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run. See ASME Code,

tected by firebrick or other heat-resisting material, and constructed to allow the piping to be inspected readily or easily.

(C) Each boiler shall have a blowdown pipe, fitted with a valve or cock, in direct connection with the lowest water space. Cocks shall be of gland or guard type and suitable for the pressure allowed. The use of globe valves shall be in accordance with ASME code. When the maximum allowable working pressure exceeds 100 psi, each blowdown pipe shall be provided with two valves or a valve and cock, such valves and cocks to be adequate for design conditions of the boiler.

(D) When the maximum allowable working pressure exceeds 100 psi, blowdown piping from the boiler to the valve or valves shall be run full size without use of reducers or bushings. The piping shall be at least extra-heavy steel and shall not be galvanized.

(E) All fittings between the boiler and blowdown valve shall be of steel or extra-heavy malleable iron. In case of renewal of blowdown pipe or fittings, they shall be installed in accordance with the requirements of the applicable section of the ASME Code.

(F) It is recommended that blowdown tanks be designed, constructed, and installed in accordance with national board recommended rules for boiler blowoff equipment.

(i) Heating boilers.

(1) Safety valves.

(A) Each steam boiler shall have one or more officially rated safety valves of the spring-pop type adjusted and sealed to discharge at a pressure not to exceed 15 psi. Seals shall be attached in a manner to prevent the valve from being taken apart without breading the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler.

(B) Each safety valve 3/4 inch or over used on a steam boiler shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch when there is no pressure on the boiler. The seats and disks shall be of suitable material to resist corrosion.

(C) No safety valve for a steam boiler shall be smaller than 3/4 inch except when the boiler and radiating surfaces are a self-contained unit. No safety valve shall be larger than 4-1/2 inches. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter.

(D) If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run. See ASME Code, Section IV, Heating Boilers.

(2) Safety relief valves.

(A) Hot water heating boiler.

(i) Each hot water heating boiler shall have at least one pressure relief valve set to relieve at, or below, the maximum allowable working pressure of the boiler.

(ii) This relief valve shall have a relieving capacity which equals or exceeds the BTU output of the boiler.

(iii) Relief valves shall be spring loaded without disk guides on the pressure side of the valve. Relief valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum permitted by clause (i) of this subparagraph.

(iv) Each relief valve shall have a substantial lifting device which will positively lift the disk from its seat at least 1/16 inch when there is no pressure on the boiler.

(v) Seats and disks of relief valves shall be made of a suitable material to resist corrosion. No materials likely to fail due to deterioration or vulcanization, when subjected to saturated steam temperature corresponding to capacity test pressure, shall be used for any part.

(vi) No relief valve shall be smaller than 3/4 inch nor larger than 4-1/2 inch standard pipe size. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/4 inch diameter or its equivalent area.

(B) Lined potable water heaters.

(i) Lined potable water heaters (tank type) shall have at least one pressure temperature relief valve of the automatic reseating type set to relieve at or below the maximum allowable pressure of the heater.

(ii) The relief valve shall have a capacity equal to or exceeding the rated burner input of the heater.

(iii) The ASME BTU rating on the valve shall be used to determine the relieving capacity.

(iv) Relief valves shall be connected directly to the heater within the top six inches of the tank.

(v) Relief valves may be installed vertically or horizontally. The center line of the horizontal connection shall be no lower than four inches from the top of the shell.

(vi) Relief valves shall not be connected to an internal pipe in the heater, or to a cold water feed line connected to the heater.

(C) Hot water supply boilers.

(i) Boilers of the forced circulation type (once through) shall be equipped with a pressure relief valve set at a pressure not exceeding the maximum allowable working pressure of the boiler.

(ii) It is recommended that where a hot water storage tank is installed in the system, it should be equipped with a pressure and temperature relief valve with a pressure setting not exceeding maximum allowable working pressure of the boiler. This pressure and temperature relief should be rated on the basis of the burner input to the boiler with an ASME BTU relieving capacity equal to or exceeding the rated burner BTU input.

(3) Safety valve and safety relief valve piping. No valve shall be placed between the safety valve or safety relief valve and the boiler nor on the discharge pipe between the safety valve and the atmosphere of the safety relief valve and the drain. When a discharge pipe is used, it shall be full size and fitted with an open drain to prevent water from lodging in the upper part of the safety valve or relief valve or in the discharge pipe. When an elbow is placed on the safety valve or relief valve discharge pipe, it shall be located close to the valve outlet. The discharge pipe shall be securely anchored and supported, independent of the valve.

(4) Pressure gages.

(A) Steam heating boilers.

(i) Each steam heating boiler shall have a pressure gage connected to the steam space, water column, or steam connection by a siphon or equivalent device exterior to the boiler. The gage shall be of sufficient capacity to keep the gage tube filled with water and arranged so that the gage cannot be shut off from the boiler except by a cock with tee or lever handle placed in a pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(ii) The scale on the dial of a steam heating boiler pressure gage shall be graduated to not less than 30 psi nor more than 60 psi. The travel of the pointer from zero to 30 psi pressure shall be at least three inches.

(B) Hot water heating boilers or hot water supply.

(i) Each hot water heating boiler shall have a pressure or altitude gage connected to it or to its flow connection which cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gage. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

(ii) The scale on the dial of the pressure or altitude gage shall be graduated to not less than 1-1/2 nor more than three times the pressure at which the safety relief valve is set. The gage shall be provided with effective stops for the indicating pointer at the no point and at the maximum pressure point.

(iii) Piping and tubing for pressure or altitude gage connections shall be of nonferrous metal when smaller than one-inch pipe size.

(5) Water Gage Glasses.

(A) Each steam heating boiler shall have one or more water gage glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall have a drain valve of the straightway type with opening not less than 1/4 inch diameter to facilitate cleaning. Gage glass replacement shall be possible under pressure.

(B) Transparent material, other than glass, may be used for the water gage provided that the material has proved suitable for the pressure, temperature, and corrosive conditions encountered in service.

(6) Stop valves.

(A) Single steam heating boilers. When a stop valve is used in the supply pipe connection of a single steam heating boiler, there shall be one used in the return pipe connection.

(B) Single Hot Water Heating Boilers.

(i) Stop valves shall be located at an accessible point in the supply and return pipe connections near the boiler nozzle of a single hot water heating boiler installation to permit draining the boiler without emptying the system.

(ii) When the boiler is located above the system and can be drained without draining the system, stop valves may be eliminated.

(C) Supply and return line. Each supply and return line to a steam heating boiler, which may be entered while adjacent boilers are in operation, shall be fitted with either two stop valves with ample drain between or a stop valve and Figure 8 blank. The blank shall be installed between the stop valve and the boiler.

(D) Type of stop valve. When stop valves over two inches in size are used, they shall be of the outside screw-and-yoke rising stem type or of such other type as to indicate at a distance whether it is closed or open by the position of its stem or other operating mechanism. The wheel may be carried either on the yoke or attached to the stem. If the valve is of the plug cock type, it shall be fitted with a slow opening mechanism and an indicating device and the plug shall be held in place by a guard or gland.

(E) Identification of stop valves by tag. When stop valves are used, they shall be properly designated, substantially as follows, by tags of metal or other durable material fastened to them:

**Supply Valve - Number ()**

**Do Not Close Without Also**

**Closing Return Valve -**

**Number ()**

**Return Valve - Number ()**

**Do Not Close Without Also**

**Closing Supply Valve -**

**Number ()**

(7) Feedwater connections.

(A) Feedwater, makeup water, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection which does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, makeup water, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, or safety relief valve, surface blowoff, water column, water gage glass, pressure gage, or temperature gage.

(B) Feedwater pipe shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

(8) Bottom blowdown or drain valve.

(A) Bottom blowoff valve. Each boiler shall have a bottom blowoff connection to the lowest water space practicable with a minimum size as shown in the following table. The discharge piping shall be full size to the point of discharge. Boilers having a capacity of 25 gallons or less are exempt from these requirements.

## Table

## Size of Bottom Blowoff Piping, Valves, and Cocks

| Minimum Required Safety or Safety Relief Valve Capacity, lb. of Steam/Hr. (Note 1) | Blowoff Piping Valves, and Cocks Size, In. (Min.) |
|---|---|
| Up to 500 | 3/4 |
| 501 to 1,250 | 1 |
| 1,251 to 2,500 | 1 1/4 |
| 2,501 to 6,000 | 1 1/2 |
| 6,001 and Larger | 2 |

**Note:** To determine the discharge capacity of safety relief valves in terms of Btu, the relieving capacity in lbs. of steam/hr. is multiplied by 1,000.

(B) Drain valve. Each boiler shall have one or more drain connections, fitted with valves or cocks connecting to the lowest water containing spaces. The minimum size of the drain piping, valves, and cocks shall be 3/4 inches. The discharge piping shall be full size to the point of discharge. When the blowoff connection is located at the lowest water containing space, a separate drain connection is not required.

(C) Minimum pressure rating. The minimum pressure rating of valves and cocks used for blowoff or drain purposes shall be at least equal to the pressure stamped on the boiler, but in no case less than 30 psi. The temperature rating of such valves and cocks shall not be less than 250 degrees Fahrenheit.

(9) Provisions for thermal expansion.

(A) Hot water heating boiler. If the system is of closed type, an airtight tank or other suitable air cushion that is consistent with the volume and capacity of the system shall be installed, and it shall be suitably designated for a hydrostatic test pressure of 2-1/2 times the allowable working pressure of the system. Expansion tanks for systems designed to operate above 30 psi shall be constructed in accordance with the ASME Code, Section VIII, Division I. Provision shall be made for draining the tank without emptying the system, except for pre-pressurized tanks.

(B) Lined potable wa heater. If a system is equipped with a check valve or pressure-reducing valve in the cold water inlet line, an airtight expansion tank or other suitable air cushion shall be considered. When an expansion tank is provided, it shall be constructed in accordance with the ASME Code, Viii, Division I, for a maximum allowable working pressure equal to or greater than the water heater. Provision shall be made for pre-pressurized tanks.

(j) Major repairs and alterations. When a major repair or alteration is necessary, it shall be subject to the approval of the inspector. Repairs to all boilers and their appurtenances shall conform as nearly as practicable to the requirements of the national board inspection code. It is not intended that any duplicate replacement, the addition of nozzles not requiring reinforcement, or changes to nonpressure-retaining components be considered an alteration. An R symbol is available to boiler repair facilities from the national board of boiler and pressure vessel inspectors upon approval by the chief inspector. Use of this stamp should be considered for major repairs.

(k) Repair or piecing tubes. In reending or piecing tubes in fire tube or water tube boilers, the remaining thickness of the tube must not be reduced by more than 10% from that required by the ASME code for pressure to be carried. In all cases, the requirements of the ASME Code, Section IX shall be met.

(l) Lap seam cracks. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted lap-type joint shall be immediately and permanently discounted for use under pressure. A lap seam crack is the typical crack frequently found in lap seams, which extends parallel to the longitudinal joint and is located either between or adjacent to rivet holes.

(m) Hydrostatic tests.

(1) When there is a question or doubt about the extent of a defect found in a boiler, the inspector may require a hydrostatic test.

(2) In preparing a boiler for a hydrostatic test, the boiler shall be filled with water to the stop valve and all air vented off. If the boiler to be tested is connected with other boilers that are under pressure, such connections shall be blanked off unless they have double stop valves on all connection pipes with a drain between.

(3) During a hydrostatic test of a boiler, the safety valve or valves shall be removed or each valve disc shall be held to

its seat by means of a testing clamp and not by screwing down the compression screw under the spring.

(4) The minimum temperature of the water used to apply a hydrostatic test shall be 70 degrees Fahrenheit, but the maximum temperature shall not exceed 120 degrees Fahrenheit.

(5) When a hydrostatic test is to be applied after inspection, the pressure shall be as follows.

(A) For all cases involving the question of tightness, the pressure shall be equal to the set pressure of the safety valve or valves having the lowest setting.

(B) For all cases involving the question of safety, the pressure shall be equal to one and one-half times the maximum allowable working pressure.

(C) The pressure applied for a hydrostatic test shall not exceed one and one-half times the maximum. In no case shall the test pressure be exceeded by more than 2.0%.

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

TRD-8904812 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Effective date: June 1, 1989

Expiration date: September 29, 1989

For further information, please call: (512) 463-2906

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# TITLE 16. ECONOMIC REGULATION

## Part IV. Texas Department of Labor and Standards

## Chapter 65. Boiler Division

### Administration

**• 16 TAC §§65.12-65.18, 65.20-65.34**

The Texas Department of Labor and Standards adopts on an emergency basis the repeals of §§65.12-65.18 and 65.20-65.34, concerning boilers. These sections are being repealed so reorganized sections may be adopted on an emergency basis.

The repeals are proposed on an emergency basis to protect the safety, welfare, and health of boiler owner/users in Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

*§65.12. Rules and Regulations Adopted by Board.*

*§65.13. Procedure for Modification of or Variation From Rules and Regulations.*

*§65.14. Conditions Not Covered.*

*§65.15. Registration.*

*§65.16. Manufacturers' Data Reports.*

*§65.17. Assignment of Boiler Numbers and Identification.*

*§65.18. Exemptions.*

*§65.20. Fees.*

*§65.21. Safety Appliances.*

*§65.22. Authority to Set and Seal Safety Appliances.*

*§65.23. Examination for a Commission.*

*§65.24. Commissions.*

*§65.25. Inspectors' Duties.*

*§65.26. Boiler Accidents.*

*§65.27. Risks-New, Canceled, or Suspended.*

*§65.28. Nonstandard Boilers.*

*§65.29. Reinstalled Boilers.*

*§65.30. Condemned Boilers.*

*§65.31. Inspection Report Forms.*

*§65.32. External Inspection.*

*§65.33. Fees for Inspections.*

*§65.34. Repair and Alteration Report Forms.*

Issued in Austin, Texas, on May 31, 1989.

TRD-8904816 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Effective date: June 1, 1989

Expiration date: September 29, 1989

For further information, please call: (512) 463-2906

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### General Requirements

**• 16 TAC §§65.41-65.52**

The Texas Department of Labor and Standards adopts on an emergency basis the repeals of §§65.41-65.52, concerning boilers. These sections are being repealed so reorganized sections may be adopted on an emergency basis

The repeals are proposed on an emergency basis to protect the safety, welfare, and health of boiler owner/users in Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

*§65.41. Foundations and Levels*

*§65.42. Supports.*

*§65.43. Clearance.*

*§65.44. Location of Discharge Outlets.*

*§65.45. Low-Water Fuel Cutoffs and Water-Feeding Devices.*

*§65.46. Electric Steam Generators.*

*§65.47. Attendance on Boilers.*

*§65.48. Care of Boiler Room.*

*§65.49. Ventilation.*

*§65.50. Conditions not Covered by Rules and Regulations.*

*§65.51. New Installations.*

*§65.52. Unfired Steam Boilers.*

Issued in Austin, Texas, on May 31, 1989.

TRD-8904824 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

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For further information, please call: (512) 463-2906

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### Power Boilers

**• 16 TAC §§65.61-65.70**

The Texas Department of Labor and Standards adopts on an emergency basis the

repeals of §§65.61-65.70, concerning boilers. These sections are being repealed so reorganized sections may be adopted on an emergency basis.

The repeals are proposed on an emergency basis to protect the safety, welfare, and health of boiler owner/users in Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

*§65.61. Safety Valves and Safety Relief Valves.*

*§65.62. Feedwater Supply.*

*§65.63. Water Level Indicators.*

*§65.64. Pressure Gages.*

*§65.65. Stop Valves.*

*§65.66. Blowdown Connection.*

*§65.67. Care and Operation.*

*§65.68. Existing Installations: Maximum Allowable Working Pressure–Standard Boilers.*

*§65.69. Existing Installations: Maximum Allowable Working Pressure–Nonstandard Boilers.*

*§65.70. Existing Installations: Age Limit.*

Issued in Austin, Texas, on May 31, 1989.

TRD-8904822 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

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Expiration date: September 29, 1989

For further information, please call: (512) 463-2906

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# TITLE 16. ECONOMIC

## Part IV. Texas Department of Labor and Standards

## Chapter 65. Boiler Division

### Heating Boilers

**• 16 TAC §§65.81-65.93**

The Texas Department of Labor and Standards adopts on an emergency basis the repeals of §§65.81-65.93, concerning boilers. These sections are being repealed so reorganized sections may be adopted on an emergency basis.

The repeal is proposed on an emergency basis to protect the safety, welfare, and health of boiler owner/users in Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

*§65.81. Safety Valves.*

*§65.82. Safety Relief Valves.*

*§65.83. Safety Valve and Safety Relief Valve Piping.*

*§65.84. Pressure Gages.*

*§65.85. Water Gage Glasses.*

*§65.86. Stop Valves.*

*§65.87. Feedwater Connections.*

*§65.88. Bottom Blowoff or Drain Valve.*

*§65.89. Provisions for Thermal Expansion.*

*§65.90. General Safety.*

*§65.91. Care and Operation.*

*§65.92. Existing Installations: Maximum Allowable Working Pressure for Existing Boilers.*

*§65.93. Portable Water Heaters: Unique Requirements.*

Issued in Austin, Texas, on May 31, 1989

TRD-8904820 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Effective date: June 1, 1989

Expiration date: September 29, 1989

For further information, please call: (512) 463-2906

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### Inspection

**• 16 TAC §§65.101-65.108**

The Texas Department of Labor and Standards adopts on an emergency basis the repeals of §§65.101-65.108, concerning boilers. These sections are being repealed so reorganized sections may be adopted on an emergency basis.

The repeals are proposed on an emergency basis to protect the safety, welfare, and health of boiler owner/users in Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

*§65.101. Inspection of All Boilers.*

*§65.102. Nuclear Boilers.*

*§65.103. Extension of Interval between Internal Inspections.*

*§65.104. Notice to Owners or Users of Boilers.*

*§65.105. Preparation for Internal Inspection.*

*§65.106. Removal of Covering to Permit Inspection.*

*§65.107. Boilers Improperly Prepared for Inspection of Test.*

*§65.108. Defective Conditions Disclosed at Time of External Inspections.*

Issued in Austin, Texas, on May 31, 1989.

TRD-8904818 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Effective date: June 1, 1989

Expiration date: September 29, 1989

For further information, please call: (512) 463-2906

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### Repairs and Alterations

**• 16 TAC §§65.121-65.124**

The Texas Department of Labor and Standards adopts on an emergency basis the repeals of §§65.121-65.124, concerning boilers. These sections are being repealed so reorganized sections may be adopted on an emergency basis.

The repeals are proposed on an emergency basis to protect the safety, welfare, and health of boiler owner/users in Texas.

The repeals are adopted on an emergency basis under Texas Civil Statutes, Article 8861, which provide the commissioner of the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

*§65.121. Major Repairs and Alterations.*

*§65.122. Repair or Piecing Tubes.*

*§65.123. Lap Seam Cracks.*

*§65.124. Hydrostatic Tests.*

Issued in Austin, Texas, on May 31, 1989.

TRD-8904814 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Effective date: June 1, 1989

Expiration date: September 29, 1989

For further information, please call: (512) 463-2906

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# TITLE 22. EXAMINING BOARDS

## Part I. Texas Board of Architectural Examiners

### Chapter 1. Architects.

### Subchapter B. Registration

◦ 22 TAC §1.25

The Texas Board of Architectural Examiners adopts on an emergency basis an amendment to §1.25, concerning a new deadline for receipt of applications for the new December administration of the graphic design divisions of the architect registration examination.

An emergency exists due to the limited time remaining for applicants to prepare and submit their applications.

The amendment to §1.25 is adopted on an emergency under Texas Civil Statutes, Article 249a.

*§1.25. Processing.*

(a) All applications and supporting documentation for examinations shall be submitted to the board no later than the following dates:

(1) June paper and pencil administered A.R.E.: February 1;

(2) Spring computer administered C/A.R.E.: June 1;[.]

**(4) December administered graphic site and building design divisions of the A.R.E.: August 1.**

(b-(d) (No change.)

Issued in Austin, Texas, on May 31, 1989.

TRD-8904869 Robert H. Norris
Executive Director
Texas Board of Architectural Examiners

Effective date: June 1, 1989

Expiration date: September 29, 1989

For further information, please call: (512) 458-1363

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# TITLE 34. PUBLIC FINANCE

## Part I. Comptroller of Public Accounts

### Chapter 3. Tax Administration

### Subchapter V. Bingo Regulation and Tax

• 34 TAC §3.554

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.554, for a 60-day period effective June 1, 1989. The text of the amended §3.554 was originally published in the February 10, 1989, issue of the *Texas Register* (14 TexReg 737).

Issued in Austin, Texas on June 1, 1989.

TRD-8904826 Wade Anderson
Rules Coordinator
Comptroller of Public Accounts

Effective date: June 1, 1989

Expiration date: July 31, 1989

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

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◦ 34 TAC §3.565

The Comptroller of Public Accounts adopts on an emergency basis new §3.565, concerning amendment of commercial license to lease bingo premises. The new section specifies under what conditions a commercial license to lease bingo premises may be amended to reflect a change in method of organization from any other form of organization to a corporation. The new section expires on July 31, 1989.

The new section is adopted on an emergency basis to implement Texas Civil Statutes, Article 179d, Bingo Enabling Act, §13(n), (o), and (p), as added by the 71st Legislature, 1989, House Bill 2260.

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

*§3.565. Amendment of Commercial License to Lease Bingo Premises.*

(a) As used in this section, the term "form of organization" means a sole proprietorship, a partnership, or a corporation.

(b) A licensee may amend a commercial license to lease bingo premises to change the form of organization of the licensee if:

(1) the amendment changes the form of organization of the licensee from any other form of organization to a corporation;

(2) the person or persons having an ownership interest in the licensee are unchanged;

(3) the leased premises are unchanged; and

(4) the application to amend the license and all necessary supporting documents are received by the comptroller on or before July 1, 1989, and the amendment is issued while this section is in effect.

(c) This section expires on July 31, 1989.

Issued in Austin, Texas, on July 31, 1989.

TRD-8904795 Bob Bullock
Comptroller of Public Accounts

Effective date: May 31, 1989

Expiration date: September 28, 1989

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

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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 1. ADMINISTRATION

## Part V. State Purchasing and General Services Commission

## Chapter 113. Central Purchasing Division

### Purchasing

- 1 TAC §§113.1, **113.2, 113.5,** 113.6

The State Purchasing and General Services Commission proposes amendments to §§113.1, 113.2, 113.5, and 113.6, concerning, general provisions to restate current law that purchase contracts are governed by the laws of the State of Texas, definitions to clarify key contract terms; public bid opening procedures to correct a cross-reference; and bid evaluation and award to clarify and identify the inception of a purchase contract.

John R. Neel, general counsel has determined that there will not be fiscal implications as a result of enforcing or administering the section.

Mr. Neel also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be persons who enter into contracts with a state agency will have clearer and more certain information concerning their contractual obligations and rights. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to John R. Neel, General Counsel, P. O. Box 13047, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 601b, Article 3, which authorize the State Purchasing and General Services Commission to make purchases for state agencies.

*§113.1. General.*

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

**(d) Purchase contracts entered into under Texas Civil Statutes, Article 601, shall contain the provision that the contract shall be governed, construed, and interpreted under the laws of the State of Texas.**

*§113.2. Definitions.*

Award–The [official act or process of [the commission] accepting a **bid creating a contract between the state and bidder. The award of an open market purchase order occurs at the time an open market purchase order is signed by the director of purchasing or his designee. The award of a term contract occurs at the time a notice of award is signed by the director of purchasing or his designee.** [which results in a contract with the state and the successful bidder (see §113.6(b)(4)) It is important to point out in this context that purchaser] Purchaser notations of award on a bid tabulation sheet or other parts of a purchasing file do not constitute an award.

Bid–An offer to contract with the state, submitted in response to an invitation for bids issued by the commission [, as a price, whether for payment or acceptance. A quotation specifically given to a prospective purchaser upon his request usually in competition with other bidders] .

Blanket Bond–A surety which may be provided by a bidder in lieu of a performance bond or litigation bond required by an individual advertisement. A blanket litigation bond must be in the amount of $100,000, payable to the State of Texas. A blanket performance bond shall be made payable to the State of Texas and be in an amount established by the commission based on a review of a bidder, annual level of participation in the state purchasing program. [A bidder must provide evidence of the blanket bond at the time the bid or proposal is submitted.]

**Notice of Award–A letter signed by the director of purchasing or his designee which awards and creates a term contract.**

Purchase orders–

(A) Open Market Purchase Order. A document issued by the commission to **accept a bid, creating an open market purchase contract** [formalize an existing purchase contract, and incorporating all the terms and conditions, and other agreements, pertinent to the purchase and its execution by the vendor].

(B) Contract Purchase Order. A release order issued by the commission under an existing term contract, and pursuant to a requisition from a using agency.

Spot purchase–A purchase of supplies, materials, or services which may be made by state agencies through local purchase procedures, provided the purchase does not exceed a total of **$1,500** [$700] and is in compliance with the act and with commission rules.

*§113.5. Public Bid Opening and Tabulation, Conditions Applicable to Both Open Market and Contract.*

(a)-(g) (No change.)

(h) Telegraphic response. Bids may be considered if submitted via telegraph provided the telegram contains information sufficient to properly identify merchandise offered, requisition number, price showing whether F.O.B. shipping point or destination, and other necessary information. (But see **113.9(2)**(A) of this title (6)(D)). Telegrams must be confirmed in writing and the written confirmation must be postmarked on or before the opening date and/or received by the commission within 48 hours after bid opening time. The confirmation must coincide with the telegram. Any confirmation not manually signed or not in full conformity with the telegram voids the entire bid.

(i)-(o) (No change.)

*§113.6. Bid Evaluation and Award, Conditions Applicable to both Open Market and Contract.*

(a) (No change.)

(b) Award.

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

(5) An **open market purchase contract is awarded and created when the director of purchasing or his designee signs an open market purchase order. A term contract is awarded and created when the director of purchasing or his designee signs a notice of award** [Awards do not become an official act of the commission until they have been approved by the purchasing administration and the orders signed by the director for purchasing or a designated commission employee].

(6)-(7) (No change.)

(c) (No change.)

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

adopt.

Issued in Austin, Texas, on May 31, 1989.

TRD-8904829 John R. Neel
General Counsel
State Purchasing and General Services Commission

Earliest possible date of adoption: July 10, 1989

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

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# TITLE 16. ECONOMIC REGULATION

## Part II. Public Utility Commission of Texas

## Chapter 21. Practice and Procedure

### Docketing and Notice

• 16 TAC §21.22

The Public Utility Commission of Texas proposes an amendment to §21.22, concerning notice given for interim fuel proceedings. The amendment would require publication of the notice within seven days of filing, setting forth the level and effective date of the proposed refund and recovery factors, and the classes of customers affected. Schedules containing the proposed fuel factors should be delivered to affected municipalities within five days of filing.

Hershel Meriwether, director of administration and Evan C. Rowe, fuel analyst, electric division, 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. Meriwether and Mr. Rowe also have determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be an expedited hearing process due to changed notice requirements of filing for proposed interim fuel factors. 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 Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757 within 30 days after publication.

The amendment is proposed under Texas Civil statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

*§21.22. Contents of Notice for Rate Setting Proceedings.*

(a) (No change.)

(b) Applicant notice. In all rate proceedings involving the Commission's original jurisdiction, the applicant shall give notice in the following ways.

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

(4) For purposes of any proceeding which may involve only one element of cost of service, such as fuel expense, notice shall be given in the same manner as set forth in paragraphs (1) and (3) of this subsection [.] , except that for **interim fuel proceedings, only one publication of the notice in the manner required by paragraph (1) of this subsection shall be required and such publication shall be within seven days after the filing. setting forth the level and the effective date of the proposed interim fuel factors, or refund or recovery factors, or both, and the classes of customers affected and, the copy of the schedule containing the proposed interim fuel factors or refund or recovery factors, or both, shall be delivered to each affected municipality within five days of the filing with the commission.**

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

Issued in Austin, Texas, on May 30, 1989.

TRD-8904780 Phillip A. Holder
Secretary
Public Utility Commission of Texas

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 458-0100

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## Chapter 23. Substantive Rules

### Rates

• 16 TAC §23.23

The Public Utility Commission of Texas proposes an amendment to §23.23, concerning fuel cost recovery. This amendment would affect the fuel cost recovery provisions of the commission's rules. Three major changes are included in this amendment. First, reconciliation of fuel costs would occur at least every three years. Second, fuel factors would be set on a regular, periodic schedule. Finally, the commission will develop and implement filing and reporting guidelines for utilities' fuel practices and proceedings.

Hershel Meriwether, director of administration and Evan C. Rowe, fuel analyst, Electric Division, have determined that there will be fiscal implications for state and local government as a result of enforcing or administering the section.

The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of $265,500 for fiscal years 1990-1994.

The effect on local government for the first five-year period the section will be in effect is an estimated additional cost of $165,000 for fiscal years 1990-1994. There will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Meriwether and Mr. Rowe also have determined that for each of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be more frequent and more thorough review of fuel costs experienced and anticipated by electric utilities (approximately $4 billion annually in Texas), improved matching of costs with customers, and improved matching of fuel revenues with fuel expenses.

The anticipated economic cost to individuals who are required to comply with the section as proposed will be $120,000 in fiscal years 1990-1994. The individuals required to comply with the section as proposed will be electric utilities. The electric utilities will be required to set fuel factors twice annually and to reconcile their fuel costs at least every three years.

Comments on the proposal may be submitted to Phillip A. Holder, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757 within 30 days after publication.

The amendment is proposed under Texas Civil statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

*§23.23. Fuel Factors and Fuel Reconciliation.* [Rate Design]

(a) **Definitions.** [General.] **The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.** [In fixing the rates of a public utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its capital investment used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.]

**(1) Fuel factor–An element in an electric utility's tariff that is designed to produce revenues that cover the utility's fuel costs. Except as provided in subsection (c)(11) or (e)(3) of this section or as otherwise ordered by the commission, a fuel factor shall be effective for a period of six months.**

**(2) Fuel reconciliation–A proceeding to determine whether a utility has over-or under-recovered its reasonable, necessary, and prudent fuel costs in the period since its last fuel reconciliation. A utility's fuel costs will be determined in accordance with subsection (d) of this section.**

**(3) Known or reasonably predictable fuel costs–A utility's fuel costs, determined in accordance with subsection (d) of this section. These costs are**

included in a fuel factor and are subject to reconciliation, in accordance with this section. Costs that are not subject to reconciliation are fixed in a rate case on the basis of adjusted test year information.

(A) Known or reasonably predictable fuel costs include:

(i) the cost of energy purchased from another utility;

(ii) the cost of energy, Purchased from qualifying facility, if the cost is equal to or less than the utility's avoided cost, as determined in accordance with §23.66 of this title (relating to Arrangements Between Qualifying Facilities and Electric Utilities);

(iii) the cost of fuel, as determined under subsection (d) of this section; and

(iv) certain fuel-related costs incurred by affiliates of the utility, in accordance with subsection (d)(3) of this section.

(B) Known or reasonably predictable fuel costs do not include:

(i) the cost of capacity purchased from another utility or a qualifying facility;

(ii) fuel handling costs;

(iii) costs associated with the disposal of fuel combustion residuals;

(iv) railcar maintenance costs;

(v) railcar lease costs;

(vi) railcar taxes;

(vii) coal brokerage fees; and

(viii) any other fuel-related costs of the utility that do not vary significantly in response to short-term changes in electricity production.

(4) Generating utility–An electric utility that generates electricity for sales that are under the jurisdiction of the commission.

(5) Nongenerating utility–An electric utility that is not a generating utility.

(6) Fuel proceeding–A proceeding under this section to:

(A) determine a fuel factor and establish provisional over-or under-recoveries: or

(B) reconcile known or reasonably predictable fuel costs incurred since the utility's most recent reconciliation.

(7) Interest shall be calculated on the monthly ending over- or under-recovery balance, at the applicable rate. The ending over-or under-recovery balance shall include accrued interest. The applicable rate for each month shall be the average monthly rate on dealer-placed three-month commercial paper, as reported by "Moody's Bond Survey" or another authoritative source. The applicable rate shall be divided by 12 for purposes of performing the monthly interest calculation. Interest shall be paid on this balance through the end of the month that precedes the month in which the over-recovery is refunded or the under-recovery is recouped by the utility.

(8) Over-recovery. The amount in any period by which a utility's revenues from the fuel factor exceed its fuel costs, as determined under subsection (d) of this section.

(9) Under-recovery–The amount in any period by which a utility's fuel costs, as determined under subsection (d) of this section, exceed its revenues from the fuel factor.

(10) Qualifying facility–Shall have the meaning ascribed to it in §23.66 of this title (relating to Arrangements Between Qualifying Facilities and Electric Utilities).

(11) Rate class–All customers taking service under the same rate schedule in a commission-approved tariff, or a group of seasonal agricultural customers, as identified by the utility.

(b) Fuel factor and over-and under-recoveries.

(1) A fuel factor for a utility is established in a proceeding under this section for a six-month period, or such other period that the commission directs. A fuel factor is determined, for any such period, by dividing the utility's known or reasonably predictable fuel costs, as defined in subsection (a)(3) of this section, for generating power that is to be sold in transactions that are under the jurisdiction of the commission by the number of kilowatt-hours of such sales. A utility's fuel factor may be designed to account for seasonal differences in fuel costs. A utility's fuel factor shall be designed to account for system losses, and for differences in line losses corresponding to the voltage level of service.

(2) If it is provisionally determined, in a proceeding to fix a utility's fuel factor, that the utility's fuel factor (applicable to the most recent period for which a fuel factor has been fixed) has resulted in an over-recovery of fuel costs, the amount of the provisional over-recovery, plus interest, may be refunded to consumers in the manner prescribed in paragraph (8) of this subsection.

(3) If it is provisionally determined, in a proceeding to fix a utility's fuel factor, that the utility's fuel factor (applicable to the most recent period for which a fuel factor has been fixed) has resulted in an under-recovery of fuel costs, the amount of the provisional under-recovery, plus interest, may be recovered by the utility in the manner prescribed in paragraph (8) of this subsection.

(4) If it is determined in a reconciliation proceeding that the utility's fuel factor has resulted in an over-recovery of fuel costs in the period since the utility's last reconciliation, the amount of the over-recovery, plus interest, may be refunded to consumers in the manner prescribed in paragraph (8) this subsection.

(5) If it is determined in a reconciliation proceeding that the utility's fuel factor has resulted in an under-recovery of fuel costs in the period since the utility's last reconciliation, and that the under-recovery resulted from events that were beyond the utility's control, the amount of the under-recovery, plus interest, may be recovered from consumers in the manner prescribed in paragraph (8) of this subsection.

(6) A provisional determination that a utility has over- or under-recovered its fuel costs is not a final decision, but is subject to final reconciliation in the utility's next reconciliation proceeding.

(7) A determination by the commission in a reconciliation proceeding that a utility has under- or over-recovered its fuel costs is a final decision.

(8) Any refund of an over-recovery or recovery by the utility of a previous under-recovery, as determined in a reconciliation case, shall be allocated as follows.

(A) Interclass allocations shall be made on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative over- or under-recovery occurred, adjusted for line losses using the most recent commission-approved loss factors.

(B) Intraclass allocations shall depend on the voltage level at which the customer receives service from the utility. Over- or under-recoveries for retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers identified by the utility shall be allocated on the basis of their individual historical usage recorded during each month of the period in which

the cumulative over- or under-recovery occurred, adjusted for line losses if necessary. Allocations for all other customers shall be based on the historical kilowatt-hour usage of their rate class.

(C) All refunds shall be made through a one-time bill credit unless it can be shown that this method would provide an incentive for customers to benefit from abnormal usage of electricity. However, refunds may be made by check to municipally-owned utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given a lump sum credit. All other customers shall be given a credit based on a refund factor that will be applied to their kilowatt-hour usage over a one-month period. This refund factor will be determined by dividing the amount of the refund allocated to each rate class by the forecasted kilowatt-hour usage for the class during the month in which the refund will be made.

(D) Notwithstanding subparagraph (C) of this paragraph, the commission may order over- or under-recoveries to be recouped over a period of more than one month, if good cause is shown for doing so.

(9) If the amount determined under paragraphs (2), (3), (4), or (5) of this section would not result in an appreciable refund to, or recovery from, all rate classes, the commission may direct that the balance be carried forward, without an immediate refund to the ratepayers or recoupment by the utility. The administrative cost of making a refund or recoupment may be considered in determining whether an amount is appreciable.

(10) A petition to lower a utility's fuel factor may be approved by the commission without an evidentiary hearing, unless a party to the proceeding requests a hearing.

(11) A utility may petition for interim refunds at any time. Such refund petitions may be approved by the commission without a hearing. Any refund shall be allocated in accordance with paragraph (8) of this subsection.

(c) Filing.

(1) The commission will conduct fuel proceedings to establish fuel factors for generating utilities at regular intervals, and such fuel factors shall be effective for six months. In each such proceeding the commission will provisionally determine whether the utility has over- or under-recovered its fuel costs for the appropriate period that ended prior to the filing of the proceeding, if a fuel factor under subsections (a) - (h) of this section was in effect for that period. A utility that in the prior calendar year generated less than one million megawatt-hours of energy may request to have its fuel factor determined on an annual basis, rather than every six months. A utility may file such a request with its application for a new fuel factor.

(2) An application to fix a fuel factor must be filed by the utility not later than 120 days before the beginning of the period in which the fuel factor will apply.

(3) The commission will conduct a fuel proceeding to reconcile a generating utility's fuel costs during any proceeding in which the utility's rates are established or changed.

(4) The general counsel of the commission shall file an application to reconcile a utility's fuel costs if more than three years have elapsed since the utility's most recent reconciliation.

(5) In a proceeding to establish a fuel factor, the utility must file the following information in a format prescribed by the commission:

(A) the utility's projected monthly sales for each rate class and for off-system sales, for the period that the fuel factor will be in effect;

(B) a projection of monthly net generation for each generating unit and a projection of the quantities of fuel required for each generating unit for the period that the fuel factor will be in effect;

(C) a projection of monthly hydro-generation for the period that the fuel factor will be in effect;

(D) a description of all scheduled outages, forced outage assumptions, and the results of the most recent efficiency test for each generating unit.

(E) a projection of the utility's fuel purchases for each plant and the contract prices and estimated delivered costs for such purchases for the fuel that will be required in the period that the fuel factor will be in effect;

(F) a projection of the utility's purchased-power costs and delivered megawatt-hours that specifies each supplier's capacity and energy charges for each month that the fuel factor will be in effect;

(G) a projection of the utility's wheeling costs and other costs, revenues, and megawatt-hours associated with generating or buying power for the period that the fuel factor will be in effect;

(H) the utility's calculation of the over- or under-recovery balance for the most recently completed period that a fuel factor was in effect, prior to the filing of the petition, including a calculation of interest;

(I) copies of all of the utility's fuel supply contracts, fuel transportation contracts, and other fuel-related contracts, and any amendments to any of them. These contracts may be filed under an assurance of confidentiality, if good cause is shown for doing so;

(J) an organizational chart for the departments of the utility that are responsible for efficient operation and dispatch of generating units, procurement and administration of fuel, fuel transportation, other fuel services, and an organizational chart for any affiliate that provides fuel, fuel transportation, or other fuel services or operates or dispatches generating units on a regular or occasional basis. Any changes in the organization shall be specifically pointed out;

(K) resumes of all professional and managerial employees of the utility or its affiliate who regularly or occasionally are engaged in power plant operation and dispatch and fuel-supply activities referred to in subparagraph (J) of this paragraph;

(L) a summary of all significant activities that were carried out by the utility since the last proceeding in which its fuel factor was fixed and that are intended to improve efficiency of generating-unit operation or reduce the cost of fuel to the utility and the projected benefits of these activities;

(M) revised fuel efficiency, fuel cost and fuel purchase reports, if the reports submitted during the appropriate period contained errors or required corrections.

(6) In any fuel proceeding under this section, the utility shall file such other information as the commission may direct.

(d) Determining fuel costs.

(1) In determining a utility's known or reasonably predictable fuel costs in any proceeding under this section, the commission shall consider all conditions or events that may affect a utility's fuel-related cost of supplying

electricity to consumers during the period that the fuel factor will be in effect or has been in effect or during the period covered by a reconciliation. In general, the standard for determining a utility's known or reasonably predictable fuel costs shall be that the utility has planned and operated its facilities and fuel procurement programs prudently, with the objective of providing reliable power at the lowest reasonable total cost. The utility shall have the burden of proving that it has met this standard in a reconciliation proceeding or that it is capable of meeting the standard in a fuel factor proceeding.

(2) In determining the fuel factor associated with the power generated by a nuclear generating plant that is in commercial operation but is not recognized by the commission as plant-in-service, for ratemaking purposes, the cost of nuclear fuel shall not be included. The cost of generating the power that the nuclear generating plant is projected to provide shall be based on the cost of the same amount of power, generated by the most economical alternative. When the nuclear generating plant is recognized as plant-in-service for ratemaking purposes, the revenue requirements associated with the nuclear generating plant shall be reduced by the following difference the cost of generating the power that the nuclear generating plant is projected to provide or has provided, as if it were produced by the most economical alternative less the actual cost of the nuclear fuel.

(3) In determining a utility's known or reasonably predictable fuel costs in any proceeding under this section, the utility has the burden of showing that:

(A) it has generated electricity efficiently;

(B) it has maintained effective cost controls;

(C) for all fuel and fuel-related contracts with nonaffiliated entities, it has obtained the lowest reasonable costs for its consumers; and

(D) for all fuel and fuel-related acquisitions from affiliated entities, all expenses incurred by affiliates have been reasonable and necessary, and the prices charged to the utility are no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons for the same item or class of item. If the supplying affiliate does not sell the item to other entities, the commission may evaluate the reasonableness of the price on such other basis as it deems appropriate.

(i) The price of fuel acquired from an affiliate shall not be considered reasonable if it exceeds the affiliate's cost of acquiring the fuel, and the price to the utility may not include profit or a return on equity. The commission may, in its discretion, include the affiliate's equity and return on equity in determining the rate base and return of the utility in a general rate case.

(ii) The commission may investigate the operations of any affiliate of a utility that provides fuel or fuel-related services to the utility. The commission's use of information gathered in such an investigation is not limited to fuel proceedings.

(4) If the utility fails to meet the burden of proof set forth in paragraph (3) of this subsection, the commission shall determine the costs that the utility should reasonably have incurred and disallow all costs in excess of that amount.

(5) A reconciliation of fuel costs shall cover the period from the utility's last reconciliation to the most recent month for which records are available.

(e) Expedited proceedings.

(1) A utility or the general counsel may file a request for an expedited proceeding to determine the utility's fuel factor if the other procedures in this section are not expected to adequately protect the interests of the utility or its customers.

(2) If a party requests an expedited proceeding to determine a fuel factor, the hearing examiner shall, as a preliminary matter, determine whether there is good cause for expediting the proceeding, in accordance with paragraph (1) of this subsection. If the hearing examiner concludes that there is good cause for expediting the proceeding, he shall adopt a procedural schedule and conduct the proceeding so as to permit the commission to issue a final order in the case within 90 days. This time limit shall begin to run when the examiner determines that there is good cause for an expedited proceeding and, in a case filed by the utility, that the utility has met all of the filing requirements for a proceeding to determine a fuel factor. In an expedited proceeding, a utility may not propose performance standards (net capacity factor or net heat rates) for generating units that are poorer than the performance standards that were used in fixing the existing fuel factor.

(3) In an expedited proceeding, the order fixing a utility's fuel factor shall be effective for such period as the commission may determine.

(f) Purchased-power cost recovery factor.

(1) A nongenerating utility may adjust its rates to reflect variations in the cost of purchased power by means of purchased-power cost-recovery factor (PCRF), if a PCRF clause is included in its tariff.

(2) PCRF is a billing factor that permits the utility to charge or credit its customers for the cost of capacity and energy purchased by the utility, to the extent that such costs differ from the cost of purchased power used to fix the base rates of the utility.

(3) The costs of the following purchases may be included in a PCRF:

(A) purchases of electricity at wholesale, pursuant to contracts or rate schedules approved, promulgated, or accepted by a federal or state authority;

(B) purchases of economy energy at rates that are lower than the purchasing utility's marginal cost of obtaining power from other sources, provided that the purchase is consistent with paragraphs (9) and (10) of this subsection; and

(C) purchases of electricity from qualifying facilities at a price equal to or less than the avoided cost.

(4) The costs of purchased power include all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased and amounts paid to qualifying facilities for the purchase of capacity and energy.

(5) A PCRF clause may include a description of the method by which any refund or surcharge from the utility's wholesale supplier will be passed on to its customers. The terms and conditions of a PCRF clause are subject to approval by the commission.

(6) Any difference between the utility's actual purchased power costs and its PCRF revenues shall be credited or charged to the utility's ratepayers in the second succeeding billing month, unless otherwise directed by the commission.

(7) Except as otherwise ordered by the commission, costs recovered through a PCRF shall be allocated on the basis of the energy consumed by the utility's customers.

(8) If the utility purchases power from an unregulated entity, such as a municipally-owned utility or an agency of the State of Texas or the United States government, the utility may submit the purchased power contract to the commission for approval of the terms, conditions and price. If the commission approves the terms of the pur-

chase, the costs of such Power may be included in the utility's PCRF.

(9) For the purpose of this section the price of economy energy shall be fixed in an amount that is equal to one half of the sum of:

(A) the purchasing utility's marginal cost of obtaining the power from another source; and

(B) the selling utility's marginal cost of producing the power.

(10) A utility may include the cost of economy energy in a PCRF only if it or a utility that supplies power to it is able to accurately compute the marginal costs referred to in paragraph (9) of this subsection.

(11) A generating utility may adjust its rates to reflect variations in the cost of purchased power in accordance with this section for power purchased from a qualifying facility at a price equal to or less than the utility's avoided costs.

(g) Reporting requirements.

(1) All generating utilities shall maintain such records of fuel and fuel-related transactions and file such monthly reports of generation, sales, and fuel and fuel-related transactions as the commission may require. Such reports and records shall be filed and maintained in such form as the commission may direct.

(2) All utilities for which a purchased-power cost-recovery factor has been approved shall record and report to the commission monthly information concerning purchased-power costs and PCRF revenues. Such reports and records shall be filed and maintained in such form as the commission may direct.

(h) Penalties.

(1) A penalty shall be imposed on any excessive PCRF collections by an investor-owned utility. An excessive PCRF collection is the amount by which any PCRF revenue exceeds a utility's actual purchased-power costs by more than 10% for any month or by more than 5% for any 12-month period.

(2) Any penalty imposed pursuant to this subsection shall be refunded to consumers in the manner prescribed in subsection (b)(9) of this section.

(i) Transition provisions.

(1) Except as provided in paragraph (2) of this subsection, when a generating utility files a fuel proceeding or an application to change rates, after the effective date of the 1989 amendment of this section:

(A) the 1989 amendment of subsections (a)-(e) of this section, the provisions of subsection (f) that apply to a generating utility, and subsection (h) shall be effective for the utility; and

(B) subsection (j)(2) of this section shall no longer apply to the utility.

(2) In a generating utility's first reconciliation proceeding following the 1989 amendment of this section, known or reasonably predictable fuel costs shall be determined in accordance with subsection (j) of this section.

(3) Except as otherwise provided, the 1989 amendment of this section is effective immediately upon the promulgation

(4) The commission may establish a schedule for individual utilities for the filing of proceedings to fix a fuel factor.

(5) Within 30 days of the effective date of the 1989 amendment of this section, each generating utility shall furnish to the commission the information requested in subsection (c)(5)(D)-(L) of this section.

(j) Pre-1989 Fuel Cost Recovery Provisions. [(b) Electric.]

(1) Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, taking into consideration the need to conserve energy and resources.

(2) The provisions of this paragraph apply to all generating electric utilities.

(A) The commission shall monitor the utility's actual and projected fuel-related costs and revenues on a monthly basis. The utility shall maintain and provide to the commission in a format specified by the commission monthly reports containing all information required to monitor monthly fuel-related costs and revenues. This information includes, but is not limited to, generation mix, fuel consumption, fuel costs, purchased power quantities and costs, and off-system sales revenues.

(B) Known or reasonably predictable fuel costs shall be determined at the time of the utility's general rate case, fuel reconciliation proceeding, or interim fuel proceeding under subparagraphs (D) and (E) of this paragraph.

(i) In determining known or reasonably predictable fuel costs, the commission shall consider all conditions or events which will impact the utility's fuel-related cost of supplying electricity to its ratepayers during the period that the rates will be in effect. These conditions or events include generation mix and efficiency, the cost of fuel used to produce the utility's generation, purchased power costs, wheeling costs, hydro generation,and other costs or revenues associated with generated or purchased power as approved by the commission.

(ii) Purchased power capacity costs, fuel handling costs, costs associated with the disposal of fuel combustion residuals, railcar maintenance costs, railcar taxes, and coal brokerage fees will not be included as known or reasonably predictable fuel costs to be recovered through the fixed fuel factor as defined in subparagraph (C) of this paragraph, unless the utility demonstrates that such treatment is justified by special circumstances.

(C) The utility shall recover its known and reasonably predictable fuel costs through a fixed fuel factor. The utility's fixed fuel factor shall be established during a general rate case, fuel reconciliation proceeding or interim fuel proceeding as designated in subparagraphs (D) and (E) of this paragraph, and shall be determined by dividing the utility's known or reasonably predictable fuel cost, as defined in subparagraph (B) of this paragraph, by the corresponding kilowatt-hour sales during the period in which the factor will be in effect. If, due to unique circumstances, such a calculation is not appropriate for a particular utility, a different method of calculation may be used. When approved by the commission, the utility's fixed fuel factor:

(i) may be designed to account for seasonal differentiation of fuel costs; and

(ii) shall be designed to account for system losses and for differences in line losses corresponding to the voltage level of service.

(D) Unless requested by a party to the proceeding, petitions to lower a utility's fuel factor may be approved by the commission without an evidentiary hearing. A lower interim fuel factor may be established and placed in effect in the first full billing cycle beginning no earlier than five days after the tariff is approved. An initial prehearing conference shall be conducted in all such proceedings no later than the 21st day following the filing of the petition, and any person who fails to attend such prehearing conference may be dismissed as a party or refused party status.

(i) An interim fuel proceeding, to lower a utility's fixed fuel factor shall be conducted when either:

(I) the utility has materially over-recovered and projects to materially over-recover its known or reasonably predictable fuel costs. In such

instance, the utility shall file a petition with the commission to lower its existing fuel factor and establish a new interim fuel factor. The petition shall clearly state all of the reasons for lowering the utility's existing fuel factor, and provide support for the new interim fuel factor. The commission may establish standards for the information and format that shall be contained in such petitions; or

(II) upon information and belief, the commission's general counsel, or any affected person, avers that the utility has materially over-recovered and projects that the utility will materially over-recover its known or reasonably predictable fuel costs, and files a petition with the commission to lower the utility's existing fuel factor and establish a new interim fuel factor.

(ii) For the purposes of determining whether a utility has materially over-recovered or projects that the utility will materially over-recover its known or reasonably predictable fuel costs, fuel costs associated with a nuclear generation plant subject to a deferred accounting order of the commission, or which is not recognized as plant-in-service in rates by the commission, are not considered known or reasonably predictable fuel costs, and the recovery of fuel costs incurred in connection with such generation plant shall not be included in the utility's fuel factors, but shall be treated separately as the commission may order.

(iii) Materially or material, as used in this paragraph, shall mean that the cumulative amount of over- or under-recovery, including interest, is the lesser of $40 million or 4.0% of the annual known or reasonably predictable fuel cost figure most recently adopted by the commission, as shown by the utility's fuel filings with the commission.

(E) If fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have resulted in a material under-recovery of known or reasonably predictable fuel costs, the utility may file a petition with the commission requesting an emergency interim fuel factor. Such emergency requests shall state the nature of the emergency, the magnitude of change in fuel costs resulting from the emergency circumstances, and other information required to support the emergency interim fuel factor. The commission shall issue an interim order within 30 days after such petition is filed to establish an interim emergency fuel factor. If within 120 days after implementation, the emergency interim factor is found by the commission to have been excessive, the utility shall refund all excessive collections with interest at the utility's composite cost of capital as established in the utility's most recent rate proceeding before the commission. Such interest shall be calculated on the cumulative monthly over-recovery balance. If, after full investigation, the commission determines that no emergency condition existed, a penalty of up to 10% of such over-collections may also be imposed on investor-owned utilities.

(F) All refunds shall be made by the utility pursuant to the methods outlined in subparagraph (G) of this paragraph.

(i) A utility may petition for interim refunds at any time. Such refund petitions may be approved by the commission without a hearing.

(ii) Any petition filed under subparagraph (D)(i)(II) may include a petition for interim refunds. Such refund petitions may be approved by the commission without a hearing, upon agreement of the parties.

(iii) If, at the conclusion of a general rate case, reconciliation proceeding, or interim fuel proceeding, the commission determines that, sometime since the utility's last general rate case, reconciliation proceeding, or interim fuel proceeding, a material over-recovery of known or reasonably predictable fuel costs had occurred and was concurrently projected to continue to occur, and the utility failed to file a petition pursuant to subparagraph (F) (i) of this paragraph, the refunds to be made may include a penalty of up to 10% of the amount that should have been refunded at that time.

(G) All refunds shall be made using the following methods.

(i) Interest shall be paid by the utility at its composite cost of capital, as established by the commission, during the period the rates were in effect. Such interest shall be calculated on the cumulative monthly over- or under-recovery balance.

(ii) Rate class as used in this subparagraph shall mean all customers taking service under the same tariffed rate schedule, or a group of seasonal agricultural customers as identified by the utility.

(iii) Interclass allocations of refunds including associated interest shall be developed on a month-by-month basis and shall be based on the historical kilowatt-hour usage of each rate class for each month during the period in which the cumulative over-recovery occurred, adjusted for line losses using the same commission approved loss factors that were used in the utility's applicable fixed or interim fuel factor.

(iv) Intraclass allocations of refunds shall depend on the voltage level at which the customer receives service from the utility. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given refunds based on their individual actual historical usage recorded during each month of the period in which the cumulative over-recovery occurred, adjusted for line losses if necessary. All other customers shall be given refunds based on the historical kilowatt-hour usage of their rate class.

(v) All refunds shall be made through a one-time bill credit unless it can be shown that this method would provide an incentive for customers to benefit from excessive usage of electricity. However, refunds may be made by check to municipally-owned utility systems if so requested. Retail customers who receive service at transmission voltage levels, all wholesale customers, and any groups of seasonal agricultural customers as identified by the utility shall be given a lump sum credit. All other customers shall be given a credit based on a refund factor which will be applied to their kilowatt-hour usage over a one-month period. This refund factor will be determined by dividing the amount of refund allocated to each rate class, by forecasted kilowatt-hour usage for the class during the month in which the refund will be made.

(H) Final reconciliation of fuel costs shall be made at the time of the utility's general rate case or reconciliation proceeding, and shall cover all months following the utility's last final reconciliation through the most current month for which records are available. Any affected person, or the commission's general counsel, may file a petition for a reconciliation proceeding, provided such petition may only be filed if it has either been over one year since that utility's last final reconciliation or the utility has materially under-recovered its known or reasonably predictable fuel costs. In reconciliation of fuel costs the utility shall have the burden of proving that:

(i) it has generated electricity efficiently;

(ii) it has maintained effective cost controls;

(iii) for all nonaffiliated fuel and fuel-related contracts, its contract negotiations have produced the lowest reasonable cost of fuel to ratepayers. To the extent that the utility does not meet its burden of proof, the commission shall disallow the portion of fuel costs that it finds to be unreasonable;

(iv) for all fuels acquired from or provided by affiliates of the utility, all fuel-related affiliate expenses are reasonable and necessary, and that the prices charged to the utility are no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items.

(I) The affiliate fuel price shall be at cost. No return on equity or equity profit may be included in the affiliate fuel price. The commission may consider the inclusion of affiliate equity return in rate of return and rate base during the utility's general rate case; however, affiliate equity return or profit shall not be considered part of fuel cost.

(II) Operational investigations of all affiliate fuel suppliers and fuel supply services shall be performed at the discretion of the commission. The commission may use the results of such investigations during succeeding general rate cases, fuel cost reconciliation proceedings, emergency request proceedings, and elsewhere as it deems appropriate.

(III) The affiliated companies shall establish, maintain, and provide for commission audit, all books and records related to the cost of fuel. These records shall explicitly identify all salaries, contract expenses, or other expenses paid or received among any affiliated companies, their employees, or contract employees. Under-recovery reconciliation shall be granted only for that portion of fuel costs increased by conditions or events beyond the control of the utility.

(I) Upon final reconciliation, in determining the final over-or under-recovery amount, interest shall be paid by the utility or to the utility in reconciliation of any over- or under-recovery of fuel costs at the utility's composite cost of capital as established by the commission in connection with the utility's base rates in effect during the periods the over- or under-recovery occurred. Such interest shall be calculated on the cumulative monthly over- or under-recovery balance. Upon final reconciliation, if refunds are owed to the utility's ratepayers, they shall be made in accordance with the provisions of subparagraph (G)(ii)-(v) of this paragraph.

(3) The provisions of this paragraph apply to all investor-owned electric distribution utilities, river authorities and cooperative-owned electric utilities.

(A) An electric utility which purchases electricity at wholesale pursuant to rate schedules approved, promulgated, or accepted by a federal or state authority, or from qualifying facilities may be allowed to include within its tariff a purchased power cost recovery factor PCRF clause which authorizes the utility to charge or credit its customer for the cost of power and energy purchased to the extent that such costs varies from the purchased power cost utilized to fix the base rates of the utility. Purchased electricity cost includes all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased and amounts paid to qualifying facilities for the purchase of capacity and/or energy. The terms and conditions of such PCRF clause, which may include the method in which any refund or surcharge from the utility's wholesale supplier will be passed on to its customers, shall be approved by an order of the commission.

(B) Any difference between the actual costs to be recovered through the PCRF and the actual PCRF revenues recovered shall be credited or charged to the utility's ratepayers in the second succeeding billing month unless otherwise approved by the commission.

(C) If the utility purchases power from an unregulated entity, such as a political subdivision of the State of Texas, the utility shall submit the purchased power contract to the commission for approval of the terms, conditions and price. If the commission issues an order approving the purchase, a PCRF may be applied to such purchases.

(D) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12 month period:

(i) investor-owned electric distribution utilities shall be subject to a 10% penalty on excess collection;

(ii) cooperative-owned electric utilities shall report to the commission the justification for excess collection.

(E) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor the costs recovered through the PCRF clause. This information includes, but is not limited to, the total estimated PCRF cost for the month, the actual PCRF cost on a cumulative basis, total revenues resulting from the PCRF, and the calculation of the PCRF.

(4) The provisions of this paragraph apply to all investor-owned generating electric utilities and river authorities.

(A) An electric utility which purchases electricity from qualifying facilities may be allowed to include within its tariff a PCRF clause which authorizes the utility to charge or credit its customers for the costs of capacity purchased from cogenerators and small power producers. These costs shall be included in the PCRF only to the extent that such costs vary from the costs utilized to fix the base rates of the utility and to the extent that they comply with §23.66(h) of this title (relating to Arrangements between Qualifying Facilities and Electric Utilities). The terms and conditions of such PCRF shall be approved by an order of the commission.

(B) Purchased power costs that are recovered through the PCRF, shall be excluded in calculating the utility's fixed fuel factor as defined in subparagraph (2)(C) of this subsection.

(C) Costs recovered through a PCRF shall be allocated to the various rate classes in the same manner as the embedded costs of the utility's generation facilities allocated in the utility's last rate case, unless otherwise ordered by the commission. Once allocated, these costs shall be collected from ratepayers through a demand or energy charge.

(D) Any difference between the actual costs to be recovered through the PCRF and the PCRF revenues recovered shall be credited or charged to the customers in the second succeeding billing month.

(E) If PCRF revenue collections exceed PCRF costs by 10% in any given month and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period, the electric utility shall be subject to a 10% penalty on excess collections.

(F) The utility shall maintain and provide to the commission, monthly reports containing all information required to monitor costs recovered through the PCRF. This information includes, but is not limited to, total estimated PCRF cost for the month, the actual PCRF cost, total revenue resulting from the PCRF, and the calculation of the PCRF clause.

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

Issued in Austin, Texas, on May 30, 1989.

TRD-8904781

Phillip A. Holder
Secretary
Public Utility Commission
of Texas

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 458-0100

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# ^Part 4. Texas Department of Labor and Standards

## Chapter 65. Boiler Division

- **16 TAC §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, 65.100**

*(Editor's Note: The Texas Department of Labor and Standards proposes for permanent*

*adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Department of Labor and Standards proposes new §§65.1, 65.10, 65.20, 65.30, 65.50, 65.60, 65.70, 65.80, 65.90, 65.100, concerning boilers. These new sections replace existing sections which have been reorganized, renumbered, and edited to improve clarity and consistency.

Meryl Vaughan, administrative assistant, boiler division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Vaughan 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 continued consumer protection. 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 George Bynog, Boiler Division, P. O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 5221c, which provide the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

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

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

TRD-8904813 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Proposed date of adoption: October 7, 1989

For further information, please call: (512) 463-2906

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## Administration

### • 16 TAC §§65.12-65.18, 65.20-65.34

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

The Texas Department of Labor and Standards proposes the repeals of §§65.12-65.18, and 65.20-65.34, concerning boilers. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

Meryl Vaughan, administrative assistant, boiler division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Vaughan 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 the improvement of section organization, clarity, and consistency. 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 George Bynog, Boiler Section, P. O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221c, which provide the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

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

Issued in Austin, Texas, on May 31, 1989.

TRD-8904817 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Proposed date of adoption: October 7, 1989

For further information, please call: (512) 463-2906

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## General Requirements

### • 16 TAC §§65.41-65.52

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

The Texas Department of Labor and Standards proposes the repeals of §§65.41-65.52, concerning boilers. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

Meryl Vaughan, administrative assistant, boiler division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Vaughan 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 the improvement of section organization, clarity, and consistency. 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 George Bynog, Boiler Section, P. O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221c, which provide the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

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

Issued in Austin, Texas, on May 31, 1989.

TRD-8904825 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Proposed date of adoption: October 7, 1989

For further information, please call: (512) 463-2906

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## Power Boilers

### • 16 TAC §§65.61-65.70

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

The Texas Department of Labor and Standards proposes the repeals of §§65.61-65.70, concerning boilers. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

Meryl Vaughan, administrative assistant, boiler division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Vaughan 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 the improvement of section organization, clarity, and consistency. 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 George Bynog, Boiler Section, P. O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221c, which provide the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

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

Issued in Austin, Texas, on May 31, 1989.

TRD-8904823 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Proposed date of adoption: October 7, 1989

For further information, please call: (512)

## • 16 TAC §§65.81-65.93

*(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 Labor and Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Labor and Standards proposes the repeals of §§65. 81-65.93, concerning boilers. These sections are being replaced to allow for the adoption of edited, renumbered, and reorganized sections.

Meryl Vaughan, administrative assistant, boiler division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Vaughan 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 the improvement of section organization, clarity, and consistency. 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 George Bynog, Boiler Division, P. O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221c, which provide the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

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

Issued in Austin, Texas, on May 31, 1989.

TRD-8904821 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Proposed date of adoption: October 7, 1989

For further information, please call: (512) 463-2906

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## Inspection

## • 16 TAC §§65.101-65.108

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

The Texas Department of Labor and Standards proposes the repeals of §§65. 101-65.108, concerning boilers. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

Meryl Vaughan, administrative assistant, boiler division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Vaughan 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 the improvement of section organization, clarity, and consistency. 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 George Bynog, Boiler Section, P. O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221c, which provide the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

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

Issued in Austin, Texas, on May 31, 1989.

TRD-8904819 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Proposed date of adoption: October 7, 1989

For further information, please call: (512) 463-2906

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## Repairs and Alterations

## • 16 TAC §§65.121-65.124

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

The Texas Department of Labor and Standards proposes the repeals of §§65. 121-65.124, concerning boilers. These sections are being repealed to allow for the adoption of edited, renumbered, and reorganized sections.

Meryl Vaughan, administrative assistant, boiler division, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Ms. Vaughan 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 the improvement of section organization, clarity, and consistency. 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 George Bynog, Boiler Section, P. O. Box 12157, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 5221c, which provide the Texas Department of Labor and Standards with the authority to promulgate and enforce a code of rules and regulations in keeping with standard usage, for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers.

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

Issued in Austin, Texas, on May 31, 1989.

TRD-8904815 Joseph Huertas
Program Manager
Texas Department of Labor and Standards

Proposed date of adoption: October 7, 1989

For further information, please call: (512) 463-2906

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# TITLE 19. EDUCATION

# Part I. Texas Higher Education Coordinating Board

## Chapter 1. Agency Administration

## Subchapter A. General Provisions

## • 19 TAC §1.7

The Texas Higher Education Coordinating Board proposes new §1.7, concerning petition for the adoption of rules. The rules are being proposed to clarify the format by which any interested person may petition the board requesting the adoption of a rule.

James McWhorter, assistant commissioner for administration, 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. McWhorter, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a clearer petition process. 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 Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 6252-13a, which provide the coordinating board with the authority to adopt rules regarding petition for the adoption of rules.

*§1.7. Petition for the Adoption of Rules.*

*§1.7. Petition for the Adoption of Rules.*

(a) Any interested person may petition the board requesting the adoption of a rule. Such a request shall be made by a petition filed with the commissioner. Form of the petition shall be as follows.

(1) Petitioner. Here give name and complete mailing address of petitioner who is filing the petition or on whose behalf the petition is filed.

(2) Statement. Petitioner hereby seeks....(Here make specific reference to the rule or rules which it is proposed to establish, change, or amend, so that it or they may be readily identified, prepared in a manner to indicate the words to be added or deleted from the current text, if any. Make reference to an exhibit to be attached to and incorporated by reference to the petition showing the amendment providing for the proposed new rule or rules including the proposed effective date, and all other necessary information in the exact form in which it is to be promulgated, published, or adopted).

(3) Justification. Here submit the justification for the proposed rule or rules in narrative form with sufficient particularity to inform the board and any interested party fully of the facts upon which petitioner relies.

(4) Signature. Respectfully submitted, (petitioner or attorney or representative and complete mailing address).

(b) Within 60 days of the filing of the petition, the commissioner shall either deny the petition in writing, stating the reasons for the denial, or institute rule making procedures by placing the requested rule on the agenda of the next regularly scheduled board meeting.

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

Issued in Austin, Texas, on May 30, 1989.

TRD-8904835 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 14, 1989

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

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## • 19 TAC §§1.21-1.56

*(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Higher Education Coordinating Board proposes the repeal of §§1. 21-1.56, concerning hearings and appeals. This subchapter is being repealed and rewritten to clarify hearing procedures in contested areas. These sections will incorporate by reference the provisions of the Administrative Procedure and Texas Register Act and set forth the procedures for the administration of all appeals before the board. A section is also included, as required by law, prescribing the form for a person to petition the board requesting the adoption of a section.

James McWhorter, assistant commissioner for administration, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. McWhorter also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer hearing procedures process. 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 Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The repeals are proposed under Texas Civil Statutes, Article 6252-13a, which provide the Coordinating Board with the authority to adopt rules regarding hearings and appeals.

*§1.21. Definitions.*

*§1.22. Object.*

*§1.23. Scope.*

*§1.24. Petition for Adoption of Rules.*

*§1.25. Action on Petition for Adoption of Rules.*

*§1.26. Proposed Rules.*

*§1.27. Notice of Proposed Rules.*

*§1.28. Public Participation on Proposed Rules.*

*§1.29. Final Adoption of Rules.*

*§1.30. Effective Date of Rules.*

*§1.31. Emergency Rules.*

*§1.32. Limitation on Contest of Rules.*

*§1.33. Procedure for Filing of Documents in Texas Register.*

*§1.34. Request for Hearing.*

*§1.35. Action on Request for Hearing.*

*§1.36. Docket of Hearings.*

*§1.37. Contested Proceedings.*

*§1.38. Uncontested Proceedings.*

*§1.39. Notice of Hearings.*

*§1.40. Parties to a Hearing.*

*§1.41. Rights of Parties.*

*§1.42. Order of Procedure.*

*§1.43. Limiting Oral Argument.*

*§1.44. Limiting Number of Witnesses.*

*§1.45. Rules of Evidence in a Contested Case.*

*§1.46. Witness Fees in a Contested Case.*

*§1.47. Recording of Proceedings in a Contested Case.*

*§1.48. Hearing Officer's Report.*

*§1.49. Notice of Board Meeting.*

*§1.50. Evidence Before the Board.*

*§1.51. Examination of the Record in a Contested Case.*

*§1.52. Ex Parte Consultations in a Contested Case.*

*§1.53. Decisions and Orders in a Contested Case.*

*§1.54. Licenses.*

*§1.55. Appeal of Action by the Commissioner.*

*§1.56. Computation of Time.*

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

Issued in Austin, Texas, on May 30, 1989.

TRD-8904833 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 14, 1989

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

## • 19 TAC §§1.21-1.40

The Texas Higher Education Coordinating Board proposes new §§1.21-1.40, concerning hearings and appeals. The new sections are adopted to clarify hearing procedures in contested areas. These sections will incorporate by reference the provisions of the Administrative Procedure and Texas Register Act and set forth the procedures for the administration of all appeals before the board. A section is also included, as required by law, prescribing the form for a person to petition the board requesting the adoption of a rule.

James McWhorter, assistant commissioner for administration, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. McWhorter also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer hearing procedures process. 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 Kenneth H. Ashworth, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 6252-13a, which provide the Coordinating Board with the authority to adopt rules regarding hearings and appeals.

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

Board–The Texas Higher Education Coordinating Board.

Commissioner–The Commissioner of Higher Education.

Contested case–A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Hearing officer–The person appointed by the board to preside at a hearing.

Party–Each person or agency named or admitted as a party to a hearing.

*§1.22. Scope and Purpose.*

(a) This subchapter shall govern the proceedings in all contested cases before the board.

(b) The purpose of this subchapter is to incorporate by reference for all purposes the provisions of the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a) and to set forth the procedure for the administration of all appeals before the board.

*§1.23. Hearing Officer.*

(a) The board may designate a hearing officer to act on behalf of the board in conducting any hearing or proceeding held pursuant to this subchapter and to prepare a written report on such hearing.

(b) The hearing officer has the authority to administer oaths; call and examine witnesses; issue subpoenas; make rulings on motions, admissibility of evidence, and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and to make any other orders as justice requires.

(c) If the hearing officer is removed, dies, becomes disabled, or withdraws from an appeal prior to the completion of duties, the board may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

*§1.24. Classification of Parties.*

(a) Designations of parties are as follows:

(1) petitioner–the party requesting a hearing

(2) respondent–the party named as such by the petitioners.

(3) intervenor–a person who shows an administratively cognizable or justifiable interest in the appeal.

(b) Regardless of errors as to designation in the pleadings, parties shall be accorded their true status in the appeal.

*§1.25. Appearance.* Any party allowed to appear may be represented by an attorney-at-law.

*§1.26. Petition for Hearing.*

(a) A request for a hearing shall be made by a petition filed with the commissioner within 45 calendar days after the decision, order, or ruling complained of is rendered.

(b) A petition for hearing shall contain the following:

(1) a description of the decision, order, or ruling complained of;

(2) the date of the decision, order, or ruling;

(3) a statement of the facts of which petitioner is aware of which petitioner believes to be true, which would lead to a reasonable conclusion that petitioner is entitled to the relief sought;

(4) a statement of the reason the petitioner is entitled to have the board take the action; and

(5) a description of the action petitioner wants the board to take on petitioner's behalf.

(c) Nothing in this section requires that petitioner plead all evidence relied upon. However, all issues relied upon by petitioner must be raised in the petition, and petitioner will not be allowed the opportunity to present evidence on issues not raised in the petition for hearing.

(d) The petition for hearing shall be filed with the commissioner by personal delivery or by certified mail. A certificate evidencing service shall be included in the petition for hearing.

*§1.27. Answers to Petition for Hearing.*

(a) Respondent shall file an answer to the petition for hearing within 30 calendar days of receipt of notification by the commissioner that a hearing has been docketed.

(b) The answer shall specifically admit or deny each allegation in the petition for hearing and shall set forth all affirmative defenses. Any allegation not specifically denied will be deemed admitted. The hearing officer may deny the respondent the opportunity to present evidence concerning any act in the petitioner's pleading which is not specifically denied or any affirmative defense which is not raised by the answer.

*§1.28. Notice of Hearing.* All parties to the hearing shall be mailed written notice at least 15 calendar days before the date set for the hearing. The notice shall include:

(1) a statement of time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular section of the statutes and rules involved; and

(4) a short and plain statement of the matters asserted.

*§1.29. Classification of Pleadings.* Pleadings filed with the hearing officer or the commissioner shall include but not be limited to, petitions, answers, replies, exceptions, and motions. Regardless of any error in its designation, the pleading shall be accorded its true status in the appeal in which it is filed.

*§1.30. Form and Content of Documents.* All pleadings, briefs, and exhibits shall be legibly handwritten, typewritten, or printed on paper 8 1/2 inches wide by 11 inches long. Electronic transmission of pleadings in proper form containing a facsimile of the signature of the attorney or party filing the pleading is permissible.

*§1.31. Filing of Documents.*

(a) Any document shall be deemed

filed only when actually received by the hearing officer or the commissioner.

(b) Documents may be filed by mail if sent by certified United States mail, return receipt requested. A document will be deemed timely filed if it was mailed one day prior to the filing deadline.

*§1.32. Service of Pleadings.* Copies of all pleadings must be sent to all parties of record in an appeal. An affirmative statement that a copy of the pleading has been sent to all parties is sufficient.

*§1.33. Prehearing Conference.*

(a) In any appeal, the hearing officer or a party may move for the setting of a prehearing conference. The hearing officer will direct that the parties appear at a specific time for a conference prior to a hearing for the purposes of considering any of the following:

(1) the formulation or simplification of issues;

(2) admission of certain assertions of fact or stipulations;

(3) the procedure at the hearing;

(4) any limitation, where possible, of the number of witnesses; and/or

(5) such other matters as may aid in the simplification of the proceeding or the disposition of matters in controversy, including the settlement of matters in dispute.

(b) Action taken at the conference shall be recorded in the manner directed by the hearing officer.

*§1.34. Motions for Continuance.* A motion for continuance shall state good cause and shall be filed in writing not less than 10 calendar days prior to the hearing date. Timely motions for continuance may be granted at the discretion of the hearing officer.

*§1.35. Dismissal or Withdrawal of an Appeal.*

(a) The hearing officer may, on the motion of a party, dismiss an appeal without a hearing for the following reasons: compromise; unnecessary duplication of proceedings; res judicata (a matter already decided by a court); withdrawal; mootness: untimely filing; lack of jurisdiction; failure of petitioner to set forth facts in the pleadings which would support a decision in petitioner's favor; failure to state a claim for which relief can be granted; or failure to prosecute.

(b) Petitioner may withdraw the appeal at any time prior to the board's decision.

*§1.36. Procedure at a Hearing.*

(a) Petitioner shall state briefly the nature of the claim or defense, what petitioner expects to prove, and the relief sought. Immediately thereafter respondent may make a similar statement, and intervenors and other parties will be afforded similar rights as determined by the hearing officer.

(b) Evidence shall then be introduced by petitioner.

(c) Unless such statement has already been made, respondent shall briefly state the nature of the claim or defense, what respondent expects to prove, and the relief sought.

(d) Evidence shall be introduced by respondent.

(e) The intervenor and other parties shall make their statement, unless they have already done so, and shall introduce their evidence.

(f) The parties may be allowed closing arguments at the discretion of the hearing officer.

(g) Unless the hearing officer, for good cause stated in the record, otherwise directs, the order of procedure shall be the order designated in subsections (a)-(f) of this section.

(h) Parties shall provide four copies of each exhibit offered.

(i) In any appeal where a party is represented by more than one attorney, the hearing officer shall require the designation of a lead attorney.

(j) A reasonable time limit may be set by the hearing officer for any oral argument offered by a party.

(k) Testimony presented at a hearing shall be confined to the subject matter designated in the hearing notice. Any testimony not relevant or material to the subject matter may be excluded by the hearing officer.

(l) The hearing officer shall have the right to limit the number of witnesses whose testimony is merely cumulative.

*§1.37. Hearing Officer's Report.* The hearing officer shall prepare a written report within 30 days of the conclusion of the hearing (unless the Commissioner grants an extension) summarizing the evidence adduced at the hearing. The report shall include a proposal for decision and a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law necessary to the proposed decision. A copy of the report shall be furnished to each party.

*§1.38. Filing of Exceptions to the Hearing Officer's Report.* All parties may file exceptions to the hearing officer's report by filing such exceptions with the commissioner within 30 calendar days of the issuance of the report.

*§1.39. Board Meeting to Consider Hearing Officer's Report.*

(a) A board meeting shall be held within 60 days after the hearing is finally closed to consider the report of the hearing officer and to issue a final decision or order. If less than a majority of the board members were in attendance at the hearing, the board may prescribe a longer period of time within which the board shall meet and issue a final decision or order. The extension, if so prescribed, shall be announced at the conclusion of the hearing.

(b) At least 15 days notice shall be given by the commissioner to all parties to a hearing of the time and place of the board meeting at which the report of the hearing officer will be considered by the board.

*§1.40. Evidence Before the Board.*

(a) Those parties appearing at the board meeting at which the report of the hearing officer is considered by the board, who have filed written objections to the report of the hearing officer, may make oral objections to the board. The board may limit the time allowed for oral objections by parties as it deems appropriate. The person or persons designated to represent the staff at the hearing may file written comments and make oral objections to the report in the same manner as other parties.

(b) No party shall be allowed to introduce evidence before the board at the meeting at which the report of the hearing officer is considered unless leave to present such newly discovered evidence has been heard by a hearing officer and the hearing officer has determined that such newly discovered evidence was unavailable at the time of the hearing and is material to the matter presented for board determination.

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

Issued in Austin, Texas, on May 30, 1989.

TRD-8904834

James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Proposed date of adoption: July 14, 1989

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

# TITLE 22. EXAMINING BOARDS

## Part I. Texas Board of Architectural Examiners

### Chapter 1. Architects

### Subchapter B. Registration

• 22 TAC §1.25

*(Editor's Note: The Texas Board of Architectural Examiners proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Board of Architectural Examiners proposes an amendment to §1.25, concerning deadlines for filing application for examination. The amendment will establish an application deadline for the December administration of the graphic design examinations.

Robert H. Norris, AIA, executive director, 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. Norris 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 an additional opportunity during the year for applicants to submit their applications for evaluation of their qualifications for admittance to the examinations. 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 Robert H. Norris, AIA, Executive Director, Texas Board of Architectural Examiners, 8213 Shoal Creek Boulevard #107, Austin, Texas 78758, (512) 458-1363.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with the authority to promulgate 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 May 31, 1989.

TRD-8904868 Robert H. Norris
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 458-1363

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## Part IV. Texas Cosmetology Commission

### Chapter 83. Sanitary Rulings

• 22 TAC §83.3

The Texas Cosmetology Commission proposes an amendment to §83.3, concerning proper quarters. The amendment is proposed in order to clarify the intent of the section. The effect of the amendment will be to save the public from confusion due to misinterpretation of the language in the section.

Ron Resech, executive director, 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. Resech 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 to save confusion due to misinterpretation of the language in the section. 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 Laura Donges, Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

*§83.3. Proper Quarters.*

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

(d) The use of a **beauty establishment** as living, dining, or **sleeping quarters** shall be prohibited. **Residential salons shall** maintain a seperate entrance which shall not open off from the living, dining, or sleeping quarters. **If a door leads into the residence, it shall be a solid door that remains locked during business hours.** [, and all doors opening into such quarters shall be permanently sealed.]

(e)-(i) (No change.)

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

Issued in Austin, Texas, on May 26, 1989.

TRD-8904857 Ron Resech
Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption July 10, 1989

For further information, please call: (512) 463-5542

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### Chapter 89. General Provisions

• 22 TAC §89.8

The Texas Cosmetology Commission proposes an amendment to §89.8, concerning student registration. This amendment is proposed in order to clarify the intent of the section. The effect of the amendment will be to save confusion due to misinterpretation of the language in the section.

Ron Resech, executive director, 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. Resech 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 to save confusion due to not fully understanding the intent of the section. 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 Laura Donges, Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

*§89.8. Student Registration.*

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

**(c) Effective September 1, 1989, a student may be enrolled in only one cosmetology course at any one time.**

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

Issued in Austin, Texas, on May 26, 1989.

TRD-8904856 Ron Resech
Executive Director
Texas Cosmetology
Commission

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5542

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• 22 TAC §89.13

The Texas Cosmetology Commission proposes an amendment to §89.13, concerning reduction, increasing, or with-holding of hours. This amendment is proposed in order to clarify and specify the intent of the section. The effect of the amendment will be to specify which other sections are affected.

Ron Resech, executive director, 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. Resech 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 to get a clearer understanding of the rules that this section will affect 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 Laura Donges, Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, which provide

the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare

*§89.13. Reduction, Increasing, or With-Holding of Hours.*

(a) Hours of instruction that have been properly acquired by the student may not be deducted or increased for any reason. This statement will appear on school registrations immediately preceding the signatures of student and instructor. Increase or decrease of credit hours earned on any basis other than clock hours actually completed is prohibited except as provided in §89.11 of this title (relating to Reduction, Increasing, or With-Holding of Hours; §89.14 of this title (relating to Concurrent Enrollments and Make-Up Hours); and §89.75 of this title (relating to Field Trips).

(b) (No change.)

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

Issued in Austin, Texas, on May 26, 1989.

TRD-8904855 Ron Resech
Executive Director
Texas Cosmetology Commission

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5542

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## • 22 TAC §89.17

The Texas Cosmetology Commission proposes an amendment to §89.17, concerning instructor applicants. The amendment is proposed in order to clarify the intent of the section. The effect of the amendment will be to specify that an applicant for an instructor license must have work experience in the State of Texas if applying from work experience.

Ron Resech, executive director, 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 Resech 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 to notify instructor applicants applying with previous work experience that they must have work experience in the State of Texas as a licensed operator. 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 Laura Donges, Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

*§89.17. Instructor Applicants.* The student instructor must have a valid Texas operator's license before registering beauty school to complete 1,500 hours in cosmetology courses and methods of teaching, and must provide a high school diploma or a GED equivalent and a properly completed registration form prior to registering beauty school in order to receive hours for the instructor course. An operator licensed by the Texas Cosmetology Commission [A licensed cosmetologist] who can verify three years operator experience in Texas in a licensed beauty salon may also qualify for the instructor examination, provided they meet the other instructor requirements.

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

Issued in Austin, Texas, on May 26, 1989.

TRD-8904854 Ron Resech
Executive Director
Texas Cosmetology Commission

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5542

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## • 22 TAC §89.20

The Texas Cosmetology Commission proposes an amendment to §89.20 concerning length of courses The proposed amendment will clarify the intent of the section.

Ron Resech, executive director, 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. Resech 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 to clarify the intent of the section and cut down on unnecessary language in this section 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 Laura Donges, Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

*§89.20. Length of Courses.*

(a) Instructor An instructor course shall be for 750 hours in an approved school in not less than six months [or more than 60 months] from the date of enrollment.

(b) Operator. The operator course shall be for 1,500 hours (1,000 hours plus 500 academic hours in a public high school) in an approved school in not less than nine months [or more than 60 months] from date of enrollment.

(c) Wig specialist. A wig specialist course shall be for 150 hours in an approved school in not less than four weeks [or more than 60 months] from date of enrollment.

(d) Shampoo-conditioning specialist. The shampoo specialist course shall be for 150 hours in an approved school in not less than four weeks [or more than 60 months] from date of enrollment.

(e) Facial specialist. A facial specialist course shall be for 300 hours in an approved school in not less than eight weeks [or more than 60 months] from date of enrollment.

(f) Hairweaving specialist. A hairweaving specialist course shall be for 300 hours in an approved school in not less than eight weeks [or more than 60 months] from date of enrollment.

(g) Manicurist. The manicuring course shall be for 150 hours in an approved school in not less than four weeks [or more than 60 months] from date of enrollment.

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

Issued in Austin, Texas, on May 26, 1989.

TRD-8904853 Ron Resech
Executive Director
Texas Cosmetology Commission

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5542

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## • 22 TAC §89.38

The Texas Cosmetology Commission proposes an amendment to §89.38, concerning solid wall. The proposed amendment is made to clarify the intent of the section. The effect of the amendment will be to save confusion due to misinterpretation of the language in the section.

Ron Resech, executive director, 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. Resech 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 save confusion due to misinterpretation of the language of the section 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 Laura Donges Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

*§89.38. Solid Wall.* [As of the effective date of these rules and regulations,] It shall be unlawful for a person, firm, or corporation to operate a beauty salon, specialty salon, or beauty school unless the same is a bona fide establishment with a permanent and definite location, completely separated [by a solid wall from floor to ceiling with no openings] from rooms used wholly or in part for residential or sleeping purposes by a solid wall or by a wall with a solid door which shall remain locked during 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 May 26, 1989.

TRD-8904851 Ron Resech
Executive Director
Texas Cosmetology Commission

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5542

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## • 22 TAC §89.39

The Texas Cosmetology Commission proposes an amendment to §89.39, concerning new salon. The amendment is proposed in order to clarify the intent of the section and to delete a subsection that is no longer appropriate for this section.

Ron Resech, executive director, 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. Resech 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 to require less square footage for a one operator salon as well as save confusion due to misinterpretation of the language of the section. 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 Laura Donges, Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8451a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

*§89.39. New Salon.*

(a) (No change.)

(b) Beauty salon requirements.

(1) Required floor space shall be **a minimum of 180** [approximately 220] square feet for the first operator and not less than 110 square feet of working, dispensary, and reception area for each additional operator, exclusive of rest rooms, utility, heating and/or cooling facilities, and retail.

(2) (No change.)

(c) (No change.)

(d) Rules and regulations for all salons.

[(1)] A salon shall not be operated in conjunction with any establishment selling food or drink, and shall be separated by a solid wall and have a separate entrance if located in the same building.

[(2) A salon must be a bona fide establishment with a permanent and definite location completely and permanently separated by solid walls with no openings from rooms used wholly, or in part, for residential or sleeping purposes.]

(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 May 26, 1989

TRD-8904850 Ron Resech
Executive Director
Texas Cosmetology Commission

Earliest possible date of adoption July 10, 1989

For further information, please call. (512) 463-5542

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## • 22 TAC §89.70

The Texas Cosmetology Commission proposes an amendment to §89.70, concerning new private beauty culture school The amendment is proposed in order to give the Texas Cosmetology Commission an idea of the financial state that a new school is in which will help protect the student

Ron Resech, executive director, 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. Resech 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 to provide the Texas Cosmetology Commission with documentation concerning the financial stability of a new school which may protect students from enrolling in a school that may close due to financial problems. 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 Laura Donges, Administrative Assistant, 1111 Rio Grande, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 8415a, which provide the Texas Cosmetology Commission with the authority to issue rules and regulations consistent with the Act that are needed to protect the public's health and welfare.

*§89.70 New Private Beauty Culture School.* An applicant for a private beauty culture school license must submit, at least 45 days prior to the tentative opening date, the following:

(1)-(6) (No change.)

(7) inspection report of fire marshall and electrical inspector available on or before the inspection; [and]

(8) copy of the curriculum for each course offered; and

**(9) proof of financial stability by providing a certified financial statement of the owner or owners.**

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

Issued in Austin, Texas, on May 26, 1989.

TRD-8904849 Ron Resech
Executive Director
Texas Cosmetology Commission

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5542

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# TITLE 25. HEALTH SERVICES

## Part I. Texas Department of Health

### Chapter 229. Food and Drug

The Texas Department of Health proposes the repeal of existing §§229. 141-229.149, and proposes new §§229.291-229.298, concerning regulation of the use of synthetic narcotics in the treatment of drug-dependent persons. The new sections cover general provisions; definitions; organization; State of Texas laws and rules and federal regulations; approval, denial, revocation; personnel; operations standards; and approved hospital narcotic drug detoxification services.

The new sections will comply with Article 7, House Bill 2091, 69th Legislature, Regular Session, 1985, which amended Texas Civil Statues, Article 4476-11, §2 and §4, to require the department to recover not less than 50% of it's actual annual expenditures of state fund for it's performance in reviewing and acting on permits; amending permits; inspecting facilities operated by permit holders; and implementing and enforcing this Act, and the rules, regulations, standards, and orders adopted and permits issued under this Act.

The new sections establish minimum standards for synthetic narcotic drug treatment programs, which include operating procedures, personnel qualifications, and physical plant standards for facilities approved to provide maintenance and/or detoxification using an approved narcotic drug (methadone); and establish fees for the permitting of those programs.

The new sections will replace existing §§229.141-229.149.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period that the sections as proposed 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 the revenue of $103,800 each year for fiscal years 1989-1993. There will be no effect on local government. The cost of compliance for small business will be the fee requirements, and personnel and physical plant requirements as set out in the rules.

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 the recovery of at least 50% of the costs incurred by the department in the permitting, inspection, implementation, and enforcement of the law in the regulation of synthetic narcotic treatment programs.

The possible annual cost to synthetic narcotic treatment programs which are required to comply with the sections as proposed will be as follows for each year of fiscal years 1989-1993: programs with a minimum of 25 patients-$875.00, programs with an average of 108 patients-$2,120, and programs with a maximum of 400 patients-$6,500.

The possible annual cost to hospitals providing detoxification treatment only which are required to comply with the sections as proposed will be $200 per hospital for each year of fiscal years 1989-1993.

Comments on the proposal may be submitted to Dennis E. Baker, Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7248. Comments will be accepted for a period of 30 days following publication of this proposal in the *Texas Register*. In addition, a public hearing on the proposed rules will be held in the Texas Commission for the Blind Auditorium, at the Criss Cole Center, 4800 North Lamar Boulevard, Austin, on July 5, 1989, beginning at 1:30 p.m.

## Synthetic Narcotic Drugs in the Treatment of Drug Dependent Persons

### • 25 TAC §§229.141-229.149

*(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 Civil Statutes, Article 4476-11, §2 and §4, as amended by House Bill 2091, 69th Legislature, Regular Session, 1985, which provide the Texas Board of Health with the authority to adopt rules deemed necessary to insure the proper use of synthetic narcotic drugs in the treatment of drug-dependent persons and to adopt fees for the issuance of permits, inspection, implementation, and enforcement of the Act.

*§229.141. Federal Regulations.*

*§229.142. Permits.*

*§229.143. Methadone Permits.*

*§229.144. Synthetic Narcotic Drug Permits.*

*§229.145. Conditions Governing Permit Holders.*

*§229.146. Records on Synthetic Narcotic Drugs.*

*§229.147. Hearing on Permits.*

*§229.148. Surrender Permit to Health Resources.*

*§229.149. Texas Public Health Regional System.*

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 June 1, 1989.

TRD-8904906 Robert A. MacLean, M.D.
Deputy Commissioner,
Professional Services
Texas Department of
Health

Proposed date of adoption: August 5, 1989

For further information, please call: (512) 458-7248.

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## Minimum Standards for Synthetic Narcotic Drug Treatment Programs

### • 25 TAC §§229.291-229.298

The new sections are proposed under Texas Civil Statutes, Article 4476-11, §2 and §4, as amended by House Bill Number 2091, 69th Legislature, Regular Session, 1985, which provide the Texas Board of Health with the authority to adopt rules deemed necessary to insure the proper use of synthetic narcotic drugs in the treatment of drug dependent persons and to adopt fees for the issuance of permits, inspection, implementation, and enforcement of the Act.

*§229.291. General Provisions.* The purpose of these sections is to provide assurance that facilities holding a synthetic narcotic drug permit are regulated under a set of minimum standards for the establishment and operation of a Narcotic Treatment Program (NTP) pursuant to the Act titled "Drug Treatment Programs; use of Synthetic Narcotics", Texas Civil Statutes, Article 4476-11. Each facility shall be approved and monitored by the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7248.

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

Approved to treat–The maximum number of patients the sponsor has determined the NTP will treat at any point in time under the approved permit.

Board–The Texas Board of Health.

Board's formal hearing procedures–The hearing procedures of the Texas Department of Health in Chapter 1 of this title (relating to Texas of Health) for conducting hearings on denial of application, suspension, or revocation of permit.

Central registry–A process in which an NTP shall share patient identifying information about individuals who are applying for or undergoing detoxification or maintenance treatment on a narcotic drug to a central record system at the Texas Health Department, Division of Food and Drugs, Austin.

Commissioner–The Commissioner of Health of the State of Texas.

Counselor–An individual who, by virtue of training or experience, is accepted as a counselor by the supervisor counselor and program director to provide social and rehabilitative counseling to patients of a NTP.

Department–The Texas Department of Health.

Detoxification treatment–The dispensing of a narcotic drug in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of an opiate drug as a method of bringing the individual addict to a drug-free state within a specified period of time. There are two types of detoxification treatment. Short-term detoxification treatment is for a period not to exceed 30 days. Long-term detoxification treatment is for a period more than 30 days but not to exceed 180 days.

Dispense–The preparing, packaging, compounding, or labeling for delivery a prescription drug or device in the course of the professional practice of pharmacy to an ultimate user pursuant to the lawful order of a licensed physician.

Federal authority–The United States Food and Drug Administration (FDA), Methadone Monitoring Section, Rockville, Maryland.

Hospital–A health care facility, licensed under Texas Civil Statutes, Article 4437f, by the department as a general hospital or a special hospital; or a health care facility licensed under Texas Civil Statutes, Article 5547-88-5547-100 by the Texas Department of Mental Health and Mental Retardation as a private mental hospital; or a hospital directly operated under the authority of other statutes of the state.

Licensed vocational nurse (LVN)–An individual who is currently licensed to practice vocational nursing by the Texas State Board of Vocational Nurses.

Licensed physician–An individual who is currently licensed by the Texas State Board of Medical Examiners to practice medicine in the State of Texas.

Medical director–A licensed physician who has had experience and continuing education in the treatment of individuals involved in the abuse of chemical or plant substances and who has a contractual arrangement with the sponsor, if he/she is not the sponsor, to provide medical management of the treatment, counseling, and rehabilitation of patients admitted to an NTP.

Maintenance treatment–The treatment of an individual who is addicted to opioid drugs, and whose addiction has reached a stage where the daily administration of an opioid drug is required to avoid the onset of symptoms of withdrawal.

Medication unit–A facility established and approved as part of, but geographically separated from an approved NTP, to administer and dispense a narcotic drug and collect urine specimens from the patients to drug screen for specified drugs.

Narcotic drug–A synthetic narcotic drug approved by the Federal Food and Drug Administration (FDA) for opioid drug maintenance or detoxification.

Narcotic treatment program (NTP)–An organization responsible for administering or dispensing a narcotic drug to an opiate addict for maintenance or detoxification treatment, which has available medical and rehabilitative services approved by the Synthetic Narcotic Drug Treatment Authority (SNDTA) and the FDA to use a narcotic drug for treatment of opiate drug addiction and is properly registered with the federal Drug Enforcement Administration (DEA).

Opiate dependent person An individual who physiologically needs an opiate-like drug to prevent the onset of symptoms of withdrawal.

Opioid drugs Any natural or synthetic drug whose pharmacological action resembles morphine.

Physician assistant (P.A.) An individual who is a graduate of a physician's assistant training program approved by the Council on Allied Health Education Accreditation of the American Medical Association or an individual who has passed the examination given by the National Commission on the Certification of Physician's Assistants.

Prescribe–The act of a practitioner to authorize a controlled substance to be dispensed to an ultimate user.

Program director–An individual who provides overall administrative management to the NTP under guidelines established by the sponsor and the medical director.

Program physician–A licensed physician who will provide medical treatment and counsel to the patients of a NTP under the supervision of the medical director.

Program standards–Written set of policies and procedures developed by the program director of each NTP and approved by the sponsor and medical director to assure compliance with these sections.

Registered nurse (RN)–An individual who is currently registered to practice professional nursing by the Texas State Board of Nurse Examiners.

Registered pharmacist–An individual who is currently registered with the Texas State Board of Pharmacy to practice pharmacy.

Services–Medical and rehabilitative activities designed to treat an opiate dependent person which include medical evaluations, counseling sessions and social programs which will assist the patient to become a productive member of society.

Sponsor–An individual, incorporated entity, or government entity who has provided assets to establish a NTP and who accepts the responsibility for management, contractual arrangements, fiscal matters, availability of health and rehabilitative services, and compliance with federal, state, and local laws in the operation of a NTP.

Standing orders–Written instructions prepared by a licensed physician pursuant to the sections of the Texas State Board of Medical Examiners relating to standing delegation orders, as described in 22 TAC, Chapter 193.

Synthetic narcotic drug–Any compound produced by independent chemical synthesis which is chemically equivalent to or identical with opioid drugs.

Synthetic Narcotic Drug Treatment Authority (SNDTA)–The Division of Food and Drugs, Bureau of Consumer Health Protection, Texas Department of Health.

Synthetic narcotic drug permit–A permit issued to a sponsor to operate an NTP which provides a narcotic drug for maintenance and/or detoxification and rehabilitative services to opioid addicted individuals.

Supervising counselor–A person who is a qualified counselor in accordance with these sections and who assumes responsibility to supervise all counseling services for the patients of a NTP.

Supervising physician–A licensed physician who is responsible for the services rendered by a physician's assistant and who has been approved by the Texas State Board of Medical Examiners to supervise a specific physician's assistant.

Treatment plan–A written statement of objectives to be achieved by the patient and the means for attaining those objectives.

Therapeutic session–A treatment or rehabilitation oriented unit of activity delivered on a one-to-one basis or in a group setting by a counselor.

*§229.293. Organization.*

(a) Organization types. A NTP may be organized as an independent single program or may be a part of a centralized organization. Each location site must receive independent approval and, upon approval, be issued a synthetic narcotic drug permit. If an applicant, to operate an NTP, is a partnership or a corporation all individuals having a majority or management interest in such corporation or partnership must be identified.

(b) Persons responsible. Where two or more NTPs share a central administration (e.g., a city or state-wide organization), the person responsible for the organization is required to be listed as the sponsor for each separate participating program. An individual shall indicate his or her participation in the central organization at the time of the application. The sponsor may fulfill all recordkeeping and reporting requirements for these programs, but each program must continue to receive separate approval. A physician may assume primary medical responsibility and be listed as medical director for more than one NTP in accordance with these sections. If a physician assumes medical responsibility for more than one NTP, a statement describing how he or she will provide medical services to each NTP is required to be attached to the application.

(c) Approval. An application to operate a NTP must be submitted to the SNDTA, FDA, methadone monitoring branch, and the DEA and receive approval from each agency.

(d) Program unit addition or deletion. Before medication may be administered or dispensed at a medication unit not previously approved for this purpose, the NTP is required to obtain approval from the FDA, the SNDTA, and the DEA. Notification is required when a NTP or a medication unit in which medication is administered or dispensed, is deleted by a program; the program shall notify the FDA and the SNDTA within three weeks prior to the deletion. Addition or deletion of facilities which provide services other than administering or dispensing medication is also permitted without approval, but notification must be made to the FDA and the SNDTA three weeks prior to the addition and/or deletion.

(e) Federal programs and programs in contiguous states. Each narcotic treatment program operated by a federal agency or a public or private narcotic treatment program located in contiguous states will be invited to participate in the central registry. Federal agencies operating narcotic treatment programs have agreed to cooperate voluntarily with state agencies by granting

permission on an informal basis for designated state representatives to visit federal narcotic treatment programs and by furnishing a copy of federal reports to the SNDTA.

(f) Services. Each NTP shall provide medical and rehabilitative services and programs in accordance with §229.297 of this title (relating to Operations Standards). These services should normally be made available at the primary facility, but the sponsor may enter into a formal documented agreement with private or public agencies, organizations, or institutions for these services, if they are available elsewhere.

(g) Medication unit. An NTP may establish a medication unit to facilitate the needs of stabilized patients in accordance with §229.297(a)(12) of this title (relating to Operations Standards).

(h) Program rules. A written and approved body of rules governing the conduct of patients must be established, posted, and maintained by the program director of each NTP.

*§229.294. State of Texas Laws and Rules and Federal Regulations.*

(a) A sponsor of a NTP shall assure that the NTP is in compliance with all State of Texas Laws and Rules including, but not limited to, the regulation of chemical dependency treatment facilities, Texas Civil Statutes, Article 5561cc; the Medical Practice Act, Texas Civil Statutes, Article 4495b; the Nurse Practice Act, Texas Civil Statutes, Article 4573-4528; the Vocational Nurse Act, Texas Civil Statutes, Article 4528c; the Pharmacy Act, Texas Civil Statutes, Article 4542a-1; and the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

(b) The sponsor of a NTP shall assure that the NTP is in compliance with Federal Methadone Regulations in the Code of Federal Regulations, Title 21, Part 291, titled "Drugs Used for Treatment of Narcotic Addicts".

*§229.295. Approval, Denial, Revocation.*

(a) Application.

(1) A complete application for a permit to operate a NTP shall be submitted to the SNDTA on a form titled "Application for a Permit to Operate a Synthetic Narcotic Drug Treatment Program".

(2) A complete application shall include:

(A) an application on a form provided by the SNDTA;

(B) a statement indicating the maximum number of patients to be treated which will be designated as approved to treat patients;

(C) documentary proof that the sponsor has submitted an application for approval to the Federal Methadone Authority pursuant to the Code of Federal Regulations. Title 21, Part 291, and a certified copy of Federal Form FDA 2632 to the SNDTA;

(D) an original of Federal Form FDA-2633 (medical responsibility statement) for the medical director and each program physician;

(E) a photo copy of each physician current Texas license and DEA registration;

(F) a curriculum vitae for the medical director and each program physician;

(G) a copy of the contract between the sponsor and the medical director, if the sponsor is not the medical director;

(H) a copy of the contract between the sponsor and a registered pharmacist, if the NTP dispenses drugs to patients and the dispensing is not performed by the physician of the NTP or is not registered by the Texas State Board of Pharmacy;

(I) evidence of need as required in subparagraph (T) of this paragraph;

(J) a complete organizational chart showing each of the following positions by title and the relationship of each position to each other position:

(i) sponsor;

(ii) program director;

(iii) medical director;

(iv) program physician(s);

(v) nurse(s);

(vi) pharmacist(s);

(vii) supervisor counselor;

(viii) primary counselor(s);

(ix) clerical staff; and

(x) maintenance staff;

(K) a scale drawing of the physical plant which will include a diagram showing the location of facilities and areas required in subsection (i) of this section; and a diagram of the security system activators and alarms;

(L) a planned budget and source of funds;

(M) a schedule of fees to be paid by patients for services;

(N) a sample of the take-out dispensing label;

(O) a tentative schedule of beginning operational hours and plans for expansion as the number of patients increase;

(P) a staffing pattern in accordance with operational hours in subparagraph (O) of this paragraph;

(Q) plans to notify the addict community of availability of this NTP;

(R) documentation to show medical and rehabilitative services are available to patients of the NTP, such as:

(i) a copy of a letter addressed to the administrator of a nearby general medical hospital notifying the administrator that patients from the NTP may wish to be admitted to the hospital for inpatient medical treatment;

(ii) a copy of a letter addressed to the administrator of a hospital that operates a narcotic detoxification service notifying the administrator that patients from the NTP may wish to be admitted for inpatient narcotic detoxification;

(iii) a copy of a letter of acknowledgment from an administrator of a clinical laboratory qualified to perform laboratory tests required in 229.297(h)(3)(H)(ix) of this title (relating to Operations Standards) which has a license from the center for disease control under the Clinical Laboratory Improvement Act of 1967, or has a certification as an independent laboratory with a Medicare provider number from the health care finance administration;

(iv) a copy of the contract with the providers of rehabilitative, social, and/or guidance services if such services are not provided by the staff of the NTP; and

(v) a description of methods and procedures employed to provide rehabilitative, social, and/or guidance services if such services are provided to patients by the staff of the NTP;

(S) evidence that all physical facilities occupied and operated by the NTP comply with all applicable health, fire, safety, occupational, and zoning codes of state and local governments;

(T) evidence that existing narcotic treatment programs or medication units, within five miles of the proposed NTP or medication unit, are not meeting the needs for the treatment of drug addicts; such as:

(i) absence of available treatment services within the local community;

(ii) waiting lists in existing programs;

(iii) law enforcement narcotic arrests; and

(iv) emergency room treatment of overdoses of heroin or other opioid drugs;

(U) documentation to show that each property owner within 500 feet of the proposed NTP or an official of the affected neighborhood association has received notification, prior to or at the same time the application for a NTP is filed with the SNDTA;

(V) documentation that local community groups such as an official of the local medical society or the local health authority, chief of police or mayor of an incorporated area, and the county sheriff or appropriate county commissioner, if in an unincorporated area, have been notified of the proposed establishment of a NTP in their jurisdiction;

(W) an acknowledgment by the applicant that a policy and procedure manual approved by the sponsor and medical director for general guidance of NTP management and operation will be available prior to the opening date of the NTP and will include at a minimum:

(i) program goals and, if applicable research goals;

(ii) a program evaluation plan;

(iii) patient identification procedures;

(iv) a system to prevent multiple program registration by the same individual;

(v) a staff schedule detailing the duties and responsibilities assigned to each staff position;

(vi) a provision to obtain staff members profile and resume of educational and professional experience;

(vii) duties and responsibilities of the program director and the medical director;

(viii) guidelines for counselors to provide counseling within the goals of the program and in compliance with state and federal law;

(ix) criteria for patient selection and procedures for determining criteria;

(x) intake procedures;

(xi) referral procedures;

(xii) transfer procedures;

(xiii) operational procedures for receiving, storing, repackaging, administering, and dispensing drugs;

(xiv) patient hospitalization or incarceration procedures;

(xv) emergency or disaster procedures;

(xvi) procedures to be used to prevent falsification while taking a urine specimen;

(xvii) involuntary and voluntary termination procedures;

(xviii) a urine collection routine related to frequency and random selection; and

(xix) any other subject related to operation of a NTP the medical director may require;

(X) a copy of the licensure certificate, letter acknowledging license status, or letter of determination of exempt status from the Texas Commission on Alcohol and Drug Abuse (TCADA).

(b) Fee assessment.

(1) A nonrefundable initial fee for evaluation, inspection, and six months of operation must accompany a complete application to operate an NTP in accordance with subsection (a) of this section. The applicant will be issued a receipt for payment of the initial fee. Subsequent to federal and state approval of the application, the sponsor will be authorized to operate a NTP for six months from the approval date.

(2) A nonrefundable fee shall be paid, subsequent to initial approval time of six months, to operate a NTP under a Synthetic Narcotic Drug Permit. A receipt will be issued by the SNDTA authorizing the sponsor to operate a NTP for a 12-month period of time as designated by the fee receipt. The synthetic narcotic drug permit and the current fee receipt must be posted in a conspicuous place within the premises of the NTP.

(3) An annual renewal fee must be submitted to the SNDTA.

(A) The sponsor shall submit to the SNDTA an appropriate annual renewal fee, as required in paragraph (5) of this subsection, by filing a renewal form provided by the SNDTA. The sponsor must file a renewal form 30 days prior to the expiration of the current fee receipt.

(B) After the fee and renewal form have been received by the SNDTA and provided the permit has not been suspended, revoked, or surrendered, a fee receipt will be issued for a 12-month period of time. The effective date of the renewal receipt will be the next day after the current fee receipt expires.

(C) The annual renewal fee will be refunded if the permit has been suspended, revoked, or surrendered prior to receipt of the fee.

(4) A permit issued by the SNDTA for the operation of a NTP applies both to the sponsor and to the place where the program is to be operated. An appropriate nonrefundable fee must accompany a request to approve changes in a NTP. Change of sponsor or relocation shall be approved by the SNDTA, DEA, and Federal Methadone Authority prior to the date operations begin.

(A) A person acquiring a NTP currently operating under a synthetic narcotic drug permit must submit a new application in accordance with subsection (a) of this section, and an initial fee as required in paragraph (5) of this subsection. The application will be approved or denied in accordance with subsection (c) of this section.

(B) The sponsor of a NTP desiring to transfer to another location must submit an application for a new permit as required in subsection (a) of this section and pay a nonrefundable relocation fee in accordance with paragraph (5) of this subsection.

(5) Fees to be paid by the sponsor are as follows.

(A) The initial fee required in paragraph (1) of this subsection shall be $500.

(B) An annual nonrefundable fee shall be $500 plus $15 for each patient which the NTP is approved to treat.

(C) A fee of $15 per patient shall be submitted in the event the sponsor requests approval to increase the number of patients approved to treat during the fee-paid year. An increase in the number of patients must be justified by demonstrating that facilities and staff are adequate to treat the increased number of patients.

(D) Temporary transfer patients shall not be considered as approved to treat patients by the program providing temporary treatment in calculation of their fee.

(E) A nonrefundable relocation fee shall be $200.

(F) A fee of $100 per annum shall be paid for each medication unit a clinic sponsor may operate.

(c) Application evaluation. A complete application filed in accordance with subsection (a) of this section for a NTP will be reviewed and evaluated by the SNDTA. If the application is incomplete, a request will be made to the sponsor to supplement the application. An application shall not be considered complete until the United States Drug Enforcement Administration has approved the sponsor for an NTP registration. As a part of the evaluation process all NTPs in the State of Texas shall be notified of the application by the SNDTA and provided an opportunity to comment. If the application is denied, the applicant shall have an opportunity for a hearing pursuant to subsection (f) of this section.

(d) Permit.

(1) A permit shall be issued subsequent to approval of an application as required in subsection (a) of this section, and payment of a fee as required in subsection (b) of this section.

(2) Failure to pay the appropriate fee required in subsection (b) of this section, is grounds for suspension, revocation, or denial of a permit as provided in subsection (f) of this section.

(3) A synthetic narcotic drug permit issued by the SNDTA shall remain in effect until suspended or revoked by the SNDTA or surrendered by the holder.

(e) Failure to comply.

(1) A sponsor of a NTP who has failed to comply with the Act and these sections shall be given notice of failure to comply and be given a period of 30 days to comply. Failure to provide the SNDTA with a plan of correction or failure to accomplish the plan of correction by the designated completion date shall be cause to give notice of intent to revoke or suspend the permit, and an opportunity for hearing in accordance with subsection (f) of this section.

(2) The SNDTA may seek an injunction through the judicial system when a violation of this Act or other state law is so severe as to affect public health or the health and safety of the NTP's patients and staff and an immediate and acceptable plan of correction cannot be obtained when the notice of failure to comply is issued. Noncompliance with the plan of correction within the agreed time parameters shall be cause to seek, through the board's formal hearing procedures, a revocation of the permit and/or the assessment of an administrative penalty, or criminal penalties as provided in the Act.

(f) Denial of application; suspension or revocation of permit.

(1) The SNDTA may, after providing an opportunity for a hearing in accordance with the board's formal hearing procedures, refuse to grant, suspend, or revoke a synthetic narcotic drug permit.

(2) If the SNDTA determines that the applicant or permit holder has failed to achieve or demonstrate compliance after due notice in accordance with subsection (e) of this section, the applicant or permit holder shall be given notice of an opportunity for a hearing in accordance with the board's formal hearing procedures before denying the application, or suspending or revoking the permit. If the applicant or permit holder desires a hearing, he shall so notify, in writing, the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas, 78756, within 10 days of receipt of the notice of an opportunity for a hearing.

(3) If a request for a hearing is filed, the department will notify the applicant or permit holder of the date, time, and place set for the hearing. The date of the hearing shall be set for not less than 10 days nor more than 20 days following the date of receipt of the request. An extension of time may be granted or may when it is mutually agreed to by the applicant or permit holder and the department.

(4) During a hearing, held pursuant to the board's formal hearing procedures, the established rules of evidence shall be followed. The department shall place in the record its allegations and grounds for denying the sponsor's application or suspending or revoking the permit holder's permit. The applicant or permit holder shall be given a full and complete opportunity to rebut the department's allegations and grounds, and to show cause why the department should not deny the sponsor's application or suspend or revoke the permit holder's permit.

(5) The commissioner or a hearing examiner may render a decision at the conclusion of the hearing in accordance with the board's formal hearing procedures. If the applicant or permit holder does not request a hearing within the specified time, then the notice of an opportunity for a hearing shall be construed to be a notice of denial of the application; or suspension or revocation of the permit as stated in the notice.

(6) Revocation of approval by the FDA or the DEA shall be an automatic suspension of the synthetic narcotic drug permit by the department on the date of revocation of either federal agency. The suspension shall be effective until the permit is surrendered, revoked, or reinstated in accordance with the board's formal hearing procedures.

(g) Compliance by existing NTPs.

(1) On the effective date of these sections each NTP holding a synthetic narcotic drug permit in good standing shall be subject to these sections. An NTP which may be in noncompliance on the effective date of these sections will be allowed 90 days to achieve compliance if the NTP is in compliance with current Federal Methadone Regulations, Code of Federal Regulations, Title 21, Part 291, except as otherwise provided in this subsection.

(2) Each sponsor shall be required to provide a report of current status on a format provided by the SNDTA. The report shall be completed and returned with the appropriate annual fee in accordance with subsection (b) of this section to the SNDTA within 10 days of receipt by the sponsor.

(3) The initial annual fee for existing NTPs shall be based on an average daily patient census for the previous six months as a minimum. The sponsor may elect to be approved for a larger number of patients approved to treat than the six months average.

(4) A receipt for the fee payment, in accordance with subsection (b) of this section will be dated and issued by the SNDTA subsequent to receiving an appropriate fee and required documentation.

(5) Application requirements in subsection (a)(2)(T), (U), and (V) of this section shall not apply to existing narcotic treatment programs.

(6) Physical plant requirements in subsection (i)(4)(5) and (6) of this section shall not apply to existing NTPs for three years from effective date of these sections.

(7) A patient who has entered treatment in a NTP prior to the effective date of these sections and who is currently enrolled and in good standing with the program standards must consent to abide by these sections within 30 days after notification from the program director. The program director shall notify all patients enrolled in the NTP within 10 days from the effective date to comply with these sections. A patient who refuses to comply with these sections subsequent to such notification shall be involuntarily terminated pursuant to §229.297(h)(10) of this title (relating to Operations Standards).

(8) Each NTP shall submit to the SNDTA a list of all maintenance and detoxification patients enrolled on a specified date for the central registry. Each patient will be identified as required in §229.297(h)(14) of this title (relating to Operations Standards). The date to report identification of all patients shall be established by the SNDTA and each NTP will be notified. The report date will be established not more than six months after the effective date of these sections.

(9) A supervisor counselor who is not qualified in accordance with §229.296(b)(6) of this title (relating to Personnel)

must be in a course of study to become qualified on the effective date of these sections and meet the qualifications prior to the expiration of two years from the effective date of approval of these sections.

(10) A counselor who is not qualified in accordance with §229.296 (b)(7) of this title (relating to Personnel) must be in a course of study or supervised in counseling activity to become qualified on the effective date of these sections and meet the qualifications prior to the expiration of two years from the effective date of approval of these sections.

(11) The medical director of a NTP on the effective date of these sections will not be required to comply with §229.296(b)(1) of this title (relating to Personnel) until two years from the effective date of these sections.

(h) Inspections and monitoring. The SNDTA may enter and inspect at any reasonable time, without prior notification, any NTP who has applied for or been issued a synthetic narcotic drug permit, to determine compliance with these sections and related statutes. The monitoring may include interviews with patients, associated personnel, inspection of relevant records needed to determine compliance with the sections, and statutes governing the operation of a NTP. Inspection and monitoring is subject to the provisions of the Code of Federal Regulations, Title 42, Part 2. Patient identifying information may not be removed from the premises for the purpose of a routine inspection.

(i) Physical plant. The physical plant shall be a structure that is appropriate and adequate to perform and deliver the required services of a NTP and shall include as a minimum:

(1) a waiting room of sufficient size to accommodate the number of patients the clinic is approved to treat and containing appropriate furniture;

(2) a waiting room physically separated from the dispensing and/or counseling areas by a sight and sound barrier;

(3) a dispensing room which provides security to program personnel and individual patients,

(4) a group counseling room of appropriate size to accommodate meaningful group sessions;

(5) a physical examination room which has a lavatory with hot and cold running water tempered by means of a mixing valve or combination faucet in the room;

(6) a restroom for patients and another for staff personnel, each of which has a lavatory with running hot and cold water and a commode;

(7) a business office area separate from the dispensing or counseling area;

(8) one counseling room, for each 50 patients the clinic is approved to treat, which will afford sight and sound privacy for patient and counselor;

(9) a security system in compliance with the Code of Federal Regulations, Title 21, Parts 1301.71, 1301.72, 1301.73, and 1301.74 related to security of controlled substances drugs; and

(10) facilities and equipment to maintain an orderly, clean, and sanitary facility.

*§229.296. Personnel.*

(a) Personnel policies.

(1) Personnel policies must be made available in writing to all personnel. Policies must include, at a minimum, sections governing the ethical conduct of staff and volunteers, confidentiality of information regarding patients and patient records, and prohibition of the use of illicit drugs. Special emphasis should be given ethical conduct and confidentiality of information regarding patients.

(2) Records of all personnel and volunteers must be maintained by each NTP. Each individual's record must contain, at a minimum:

(A) individual's qualifications for the position the individual occupies as described in a current job description;

(B) employment application or resume;

(C) contract for service, if applicable;

(D) employee's annual evaluations; and

(E) written acknowledgment indicating that the individual has received, understands, and agrees to abide by all program standards.

(3) A staff member, either full-time, part-time, or volunteer, may not be on a methadone or other narcotic drug regimen. Any other psychotropic drug a staff member or volunteer may be consuming must be under the order of a licensed physician.

(4) An individual who has been drug or alcohol dependent may be employed by a NTP if there is proof the individual has abstained from the use of drugs (except those ordered by a licensed physician) and alcohol abuse for two years immediately preceding the date of employment. In addition, the individual must be involved in a rehabilitation program which addresses the individual's dependency circumstances.

(5) Each employee and volunteer, at the time of employment or the effective date of these sections, shall consent to and provide a urine specimen to be used as a drug screen. A drug screen for each employee shall be done when employment begins and biannually, as a minimum, on an unannounced basis. The drug screen shall include all those tests in accordance with §229.297 (h)(7)(B) of this title (relating to Operations Standards) and a test for tetrahydrocannabinols.

(6) All nursing staff must have received training in emergency first aid, cardiopulmonary resuscitation, and choke relief techniques. If a new nursing staff member has not received this training, such training must be completed within the first three months of employment and be documented in the employee record.

(7) The sponsor shall designate a licensed physician to be the medical director in accordance with subsection (b)(1) of this section who will agree to assume responsibility for supervising all medical affairs of the NTP and visit that program, as a minimum, once each month to fulfill the responsibilities of medical director of a NTP in accordance with §229.297(h)(1) of this title (relating to Operation Standards).

(8) Each NTP shall contract for the services of a full-time equivalent physician as a program physician for each 300 patients for which the NTP is approved to treat. Full time equivalent shall be not less than 35 hours per week. If the NTP is approved for less than 300 patients, the program physician's time may be prorated on 35 hours per week per 300 patients ratio. At all times the NTP is open and a program physician or medical director is not present on site, one of them must be available by telephone for consultation within a 30-minute time period.

(9) The hours per week a physician has available to serve as a program physician and/or medical director of an NTP shall also be determined by other professional responsibilities and duties to which the physician may be obligated. It must be shown the physician can reasonably be expected to provide sufficient time to the affected NTP when his or her other responsibilities are considered. Sufficient time evaluation shall be determined by the SNDTA with all known factors and circumstances considered.

(10) A physician's assistant may serve to meet the physician's on-site requirement in accordance with the Texas State Board of Medical Examiners rules for physician's assistants, 22 TAC, Chapter 185. The supervising physician must visit the clinic site, as a minimum, of once each week and review patient treatment, with the physician's assistant.

(11) Each NTP shall have a program director appointed by the sponsor and

medical director. A program director may serve only one NTP on a full-time basis when the number of approved to treat patients is 300 or above. When the approved to treat number of patients is above 100, but less than 300, the program director may serve, on a half-time basis, two NTPs. When the approved to treat number of patients is 100 or below the program director may serve, on a one-third time basis, three NTPs.

(12) A NTP must employ, retain on contract, or otherwise provide the availability of a psychiatrist, psychiatric nurse, clinical psychologist, or a clinical social worker, to have available the consultative services of their expertise to the patients of the NTP.

(13) The NTP program director shall employ, with the approval of the medical director, other professionals as follows:

(A) an RN and/or an LVN to administer and provide the narcotic drug. Additional duties may include maintenance of the drug records and storage of the drug;

(B) an RN and/or physician's assistance to assist the program physician, if requested by the program physician;

(C) a registered pharmacist to conduct dispensing or repackaging functions as appropriate, if drugs are dispensed as take-home doses and the act is not performed by the program physician;

(D) an individual qualified as a supervisor counselor in accordance with these sections;

(E) other qualified counselors as required in accordance with these sections; and

(F) other staff as required to provide appropriate clerical and maintenance services to the program

(b) Personnel qualifications. Each staff member shall be qualified according to the standard of the applicable profession and the qualifications established in these sections.

(1) A licensed physician shall have experience and continuing education credits to be qualified to become medical director of an NTP:

(A) experience as a program physician in a drug dependent treatment activity for a period of two years within the preceding five years; and

(B) continuing education consisting of two years of certified continuing education credits consisting of 20 credit hours annually in subjects directly related to medical management of chemical dependence, Category I, certified by the American Medical Association (AMA). In lieu of AMA certification, equivalent training may be certified by the Texas Medical Association, Texas Osteopathic Association, or American Osteopathic Association.

(2) A program physician shall be a licensed physician qualified as the medical director may require.

(3) The program director shall have at least a bachelor degree in social sciences, psychological sciences, medical or health care administration, or other appropriate health related discipline, must have direct and progressively responsible experience in the operation of a NTP within the preceding three years of the date of employment, and be able to demonstrate knowledge of:

(A) initial screening and intake of opiate addicts;

(B) the taking of psychosocial history and the drafting of appropriate treatment plans;

(C) the availability of appropriate medical resources and other support services to which a patient may be referred by program staff;

(D) supervision and scheduling the duties of all staff members;

(E) the maintenance of legally required records and other appropriate records to show the provision of efficient and effective treatment to patients and in a form that can be understood by other professionals not directly involved with the program; and

(F) security and dispensing of narcotic drugs in accordance with federal and state laws.

(4) An RN or LVN shall have one year of full-time experience in the treatment of opioid addicts within the preceding three years from the date of employment.

(5) A licensed pharmacist shall have one year experience in preparing, administering, dispensing, and providing narcotic drugs within the preceding three years from the date of employment.

(6) A supervisor counselor shall meet the following licensure and experience requirements:

(A) a minimum of two years full-time (35 hours per week) experience as a narcotic drug counselor within the preceding five years from the date of employment; and

(B) credentialed by a recognized professional association related to treatment of opiate addiction, licensed by the state to provide medical and therapeutic services, and/or be certified by the Texas Certification Board of Alcoholism and Drug Abuse Counselors as a Certified Alcohol and Drug Abuse Counselor (CADAC).

(7) A counselor shall meet the following licensure and experience requirements:

(A) academic credentials related to treatment of opiate addiction; and

(B) be credentialed by a recognized professional association related to treatment of opiate addiction, be licensed by the state to provide medical and therapeutic services, and/or be certified by the Texas Certification Board of Alcoholism and Drug Abuse Counselors as a Certified Alcohol and Drug Abuse Counselor (CADAC).

*§229.297. Operations Standards.*

(a) General operations.

(1) Service. A NTP shall provide a comprehensive range of medical and rehabilitative services to its patients in accordance with this section.

(2) Compliance with Medical Practice Act. When the sponsor is not a licensed physician or an organization approved and certified in accordance with the Medical Practice Act of Texas, §5.01 Texas Civil Statutes, Article 4495b, the provision of health services by a program physician shall be in compliance with the Medical Practice Act.

(3) Incident reports. All NTPs shall report to the SNDTA any unusual incident involving a patient which shall include, but is not limited to, drug related deaths and drug related hospitalizations. The report may be made on a format approved by the SNDTA.

(4) Change of medical director, program director, or program physician. A change of responsibilities for the medical director, program director, or the program physician shall be reported to the SNDTA within 72 hours. A resume for a new program director and a curriculum vitae and medical responsibility form, a photo copy of current medical license, and a photo copy of current DEA registration for a new medical director or program physician must be submitted to the SNDTA within 10 days after the change occurs.

(5) Hospitalized patients. These sections do not preclude the treatment of a patient who is hospitalized for the treatment of medical conditions other than opioid drug addiction and who requires temporary narcotic drug treatment during hospitaliza-

tion and whose enrollment in a NTP has been verified.

(6) Prohibition of unapproved use of narcotic drugs. A physician shall not prescribe, order, administer, or dispense an opiate drug for the treatment of opiate addiction unless the drug has prior approval by the FDA for maintenance or detoxification of opiate addicts. A narcotic drug used in a NTP shall be approved by the FDA as set out in the Code of Federal Regulations, Title 21, Part 291.

(7) Restricted drug shipment. An approved narcotic drug may be shipped only to a permit holder or a drug wholesaler registered under the Texas Food, Drug, and Cosmetic Act, §27, Texas Civil Statutes, Article 4476-5.

(8) Vocational rehabilitation, education, and employment services.

(A) Each program shall provide opportunities directly, or through referral to community resources, for patients who either desire or have been deemed by the program staff to be ready to participate in educational job-training program in order to obtain gainful employment.

(B) The patient's needs and readiness for vocational rehabilitation, education, and employment should be evaluated and recorded in the patient's records during the preparation of the initial treatment plan and reviewed and updated as appropriate in subsequent periodic treatment plan evaluations.

(9) Clinically indicated services. Other services must be accessible as clinically indicated and include medical services, immunological services, access to hospital service, if required, and referral of pregnant patients for prenatal care, if required.

(10) Supportive services. The program director or the medical director shall take notice, when considering the staffing pattern, that maintenance treatment programs must establish supportive services in accordance with the varying characteristics and needs of their patient populations. The program's staffing pattern may be based on a combination of patient needs and available and accessible community resources.

(11) Treatment services.

(A) At the initiation of treatment services a counselor must be identified as having the primary responsibility for the patient and be named as the primary counselor. Each primary counselor shall be responsible for a caseload of not more than 50 patients.

(B) An individualized treatment plan for the patient must be developed in accordance with subsection (h)(3)(I)(ii) of this section, and in keeping with the severity or acuteness of the condition of the patient. The plan must include the immediate objectives for the patient, the anticipated outcome or long-term objectives with projected target dates, and the type and frequency of therapeutic sessions for the patient. The plan must be signed by the patient and by any other affected person, if applicable, and by the primary counselor.

(C) Progress notes must document the services provided to the patient to include an assessment of the progress of the patient toward objectives established in the treatment plan. The notes must be recorded and signed by the primary counselor in the patient's record. The notes must be reviewed and cosigned every 90 days by the supervisor counselor and annually by the program physician.

(12) Medication units. To lawfully operate a medication unit, the NTP shall, for each separate unit, obtain approval from the FDA, the DEA, and the SNDTA. The SNDTA, in determining whether to approve a medication unit, will consider the distribution of units within a particular geographic area. A new medication unit shall be required to receive approval before it may lawfully commence operations.

(A) A sponsor may establish up to three medication units each of which is geographically located more than five miles, road travel, from the parent NTP and from each other for the purpose of administering or dispensing a narcotic drug and collecting urine samples for the convenience of patients.

(B) A medication unit shall be operated only in a facility licensed by the Texas State Board of Pharmacy and shall receive the narcotic drug from the parent NTP.

(C) A patient shall not be medicated in the medication unit while in Phase I or Phase II of treatment in accordance with subsection (h)(5)(D) of this section.

(D) A patient must return to the primary program location for all counseling activity in order to continue to receive a narcotic drug at the medication unit and any deviation from program standards or violation of these sections will require the patient to receive all drug doses at the primary program.

(E) A complete record of administration or dispensing of a narcotic drug and urine specimen collections shall be maintained separately by the medication unit.

(F) A medication unit shall be limited to 30 patients or less at any point in time.

(b) General admission and discharge.

(1) Each NTP must develop and utilize procedures for the intake, disposition, and notification of individuals seeking treatment in accordance with subsection (h)(3) and (4) of this section.

(2) Patients admitted to a NTP must be:

(A) treated by staff with respect;

(B) assigned a primary counselor;

(C) afforded access to the least restrictive treatment alternative available consistent with the needs of that patient;

(D) assured that patient identifying information is confidential;

(E) given reasonable privacy consistent with the need for safety; and

(F) assured freedom from neglect, abuse, exploitation, or any form of corporal punishment.

(3) Whenever there is a reason to believe security of a facility or the safety of patients or others may be endangered, and/or contraband or objects which are illegal to possess are present in the facility, appropriate action must be taken within the limits of the law to remove the danger. Written reports of all actions must be made and forwarded to the program director in accordance with written and approved procedures.

(4) In the event an individual applying for admission to a NTP exhibits symptoms of illness, mental disturbance, or is in need of hospital inpatient drug detoxification or other need beyond the scope of the program, program personnel must attempt to secure the needed assistance and document those efforts. If referral to another agency or practitioner is made, an attempt must be made to obtain from the individual a lawful written consent form for the referral. Those efforts must be documented if a consent is refused by the individual.

(5) If, in the clinical judgment of the program physician, an individual will not benefit from narcotic drug treatment, or if treating the individual would pose a danger to other patients, staff, or other individuals, the individual may be refused such

treatment even if meeting minimum standards for admission. The program director may deny admission to an individual upon refusal to agree to abide by program sections or sign the lawful informed consent form.

(6) When it is evident to the program physician and primary counselor that a patient has received optimum benefit from treatment, the patient must be discharged or referred according to a written discharge plan and in accordance with subsection (a)(12) of this section.

(7) A patient must be involuntarily discharged when absent from required attendance for a period of 14 days. If the patient returns after having been absent from required attendance less than 14 days that person shall have a therapeutic session with his/her counselor and the counselor shall access appropriate punishment for the absence. Should the patient return subsequent to a discharge but less than 90 days after discharge he/she must be placed in Phase II for 30 days before being eligible to return to the attendance schedule as determined by time in treatment. If a physical examination has been performed within the preceding year, another physical examination is not required for a patient readmitted under this subsection. A drug screen and vital signs shall be performed upon readmittance.

(8) Urine testing results may be used by NTPs as one clinical tool for the purpose of diagnosis and in the determination of treatment. Patient records must reflect the manner in which test results are utilized. Urine specimens must be collected in a manner that minimizes falsification.

(c) Patient records.

(1) Each NTP shall maintain a complete treatment record in which patient identifying information is maintained in a confidential manner for each patient in accordance with the Code of Federal Regulation, Title 42. Part 2.

(2) Patient records must be kept secure from unauthorized access, and each NTP must adopt procedures which control access to and use of patient records. Where the signature of a licensed physician is required, the signature must be original. The use of a signature stamp or authorized proxy signature is prohibited. NTP patient records must be separated from other records in programs which provide other types of service.

(3) Clinical and medical records must be retained for a minimum period of three years following closure of the record. Disposition of the records of patients must be done in accordance with subsection (f) of this section, and the Code of Federal Regulations, Title 42, Part 2.

(4) Treatment records must contain, at a minimum:

(A) patient name and address;

(B) name, address, and telephone number of guardian or representative, if applicable;

(C) source of referral and relevant referral information;

(D) reports of any communicable diseases;

(E) documentation of orientation to program operation and sections;

(F) medical history and physical examination report;

(G) psychosocial and drug abuse assessment including documentation of addiction for maintenance patients;

(H) a signed and dated initial and periodic treatment plan;

(I) a signed and dated record of assessments and reviews;

(J) progress notes;

(K) laboratory results;

(L) record of attendance at therapeutic sessions;

(M) record of all disciplinary actions, if applicable;

(N) incident reports, if applicable;

(O) record of all contacts with medical personnel and other professionals;

(P) record of drugs prescribed other than narcotic drug(s);

(Q) physician's signed orders for drug treatment; and

(R) record of the administration, dispensing, or provision of a narcotic drug to each patient.

(d) Exemption from operational standards.

(1) In unusual circumstances, when a requirement is found to interfere with the safe and effective operation of a NTP, a request by the program director, with the approval of the medical director, may be made by telephone communication to the SNDTA for approval to deviate temporarily from the rules set forth in this section.

(2) Exceptional deviation from these rules must be well justified by the program director and medical director. A deviation may be requested if one or more of these conditions and/or circumstances may occur or currently exist:

(A) a hazard to public health;

(B) circumstances beyond the control of the management of the NTP which have occurred or is anticipated to occur; or

(C) medical or social circumstances affecting a group of patients which may cause that group of patients to terminate treatment.

(3) Circumstances related to the exemption request must be documented in the NTP administrative records.

(4) A time limit shall be established on the duration of the exemption at the time it is granted by the SNDTA.

(5) The SNDTA will respond to a written request with a letter of approval or denial.

(6) Exceptional take-out doses for individual patients shall be granted only in accordance with subsection (h)(6) of this section.

(e) Permanent transfer.

(1) When a narcotic addict requests to be admitted as a transfer from another NTP or an out of state approved narcotic drug maintenance program, the parent narcotic treatment program must provide the following information within a reasonable time and may not withhold such transfer information for any reason. The receiving NTP is responsible for obtaining a written consent in accordance with the Code of Federal Regulations, Title 42, Part 2.

(2) The patient assessment must include at a minimum:

(A) date the one-year documentation of addiction was determined for this episode of treatment (an episode of treatment is treatment with less than a two-year interruption);

(B) treatment received at transferring clinic during this episode of treatment;

(C) a social and clinical history of the patient including drug abuse history;

(D) information relating to the social, economic, and family status;

(E) educational and vocational achievements;

(F) history of criminal behavior; and

(G) a discharge summary signed and dated by the program director and the medical director from the transferring narcotic treatment program which provides as a minimum, the current dose, a current schedule of observed doses, the date admitted for this episode of treatment, and the name and address of the narcotic treatment program where the patient was initially admitted for this episode of treatment.

(3) The number of take-out doses provided a permanent transfer patient shall not exceed those received by the patient at the narcotic treatment program from which he/she transferred. A permanent transfer patient shall not receive take-out doses exceeding those allowed under Phase III subsection (h)(5)(D)(iii) of this section. The first day dose of a permanent transfer patient shall not exceed the last dose administered at the narcotic treatment program from which the patient transferred.

(4) Other information relevant to the admission request which may be helpful in determining appropriate treatment activity must be released when specifically requested by the receiving NTP program physician.

(5) A copy of the physical examination and laboratory tests will be requested from the transferring narcotic treatment program by the receiving NTP. Any part of the physical examination information as required in subsection (h)(3) (H) of this section, or any part of the laboratory tests as required in subsection (h)(3)(H)(ix) of this section, not available from the transferring narcotic treatment program shall be performed by the receiving NTP. Physical examination and laboratory tests records, must be received for a permanent transfer patient within 10 days from admitting date.

(6) A minimum physical examination as required in subsection (h)(3)(H)(vi) , (vii), and (viii) of this section shall be performed.

(7) A transfer patient shall provide a urine specimen for a drug screen in accordance with subsection (h)(7) of this section.

(f) Program closure. If voluntary closure of a NTP is pending, the sponsor must notify the SNDTA in writing at least three weeks prior to such closure. If the NTP is closed involuntarily by the SNDTA pursuant to §229. 295(e) of this title (relating to Approval. Deniat, Revocation) the program must maintain its records until the question of closure is resolved. The closing clinic must attempt to place each patient in another appropriate treatment program and secure each patient's written consent to transfer the patient's records to that narcotic treatment program. Written notice of record transfer must be made to the patient and a copy retained in the program's files. If the NTP was a recipient of public funds and was ordered to cease and desist operations pursuant to administrative or court orders' the records of the patients not transferred must be placed in the custody of the funding agency. Any hospital which already has received federal and state approval, as a detoxification service may serve as a temporary NTP when an approved NTP has been terminated and there is no other NTP immediately available within the city to provide narcotic drug treatment for the patients in accordance with §229. 298(d)(6) of this title (relating to Approved Hospital Narcotic Drug Detoxification Services). This temporary treatment shall be limited to 30 days subsequent to the closing date of the closed NTP.

(g) Drug supervision and control.

(1) Dose form. The narcotic drug shall be administered or dispensed in liquid oral form when used in a NTP. Hospitalized patients under care for a medical or surgical condition are permitted to receive methadone or other approved narcotic drugs in parenteral form when the attending physician deems it advisable. The total dosage is required to be formulated in such a way as to reduce its potential for parenteral abuse.

(2) Acceptance of delivery. Delivery shall be made to a licensed practitioner or his/her authorized agent employed at the NTP. At the time of delivery the licensed practitioner or his/her authorized agent shall sign for the drugs and place the practioner's specific title and identification number on each invoice. Copies of these signed invoices shall be kept by the program.

(3) Security of drug stocks. Adequate security is required to be maintained over drug stocks, over the manner in which it is administered or dispensed, over the manner in which it is distributed to medication units, and over the manner in which it is stored to guard against theft and diversion of the drug. The program is required to meet the security standards for the distribution and storage of controlled substances as required by the Drug Enforcement Administration, Department of Justice (21 Code of Federal Regulations 1301.72 §1301.76).

(4) Records. The program director shall ensure that accurate records traceable to specific patients are maintained showing dates, quantity, and batch or code marks of the drug dispensed or administered. These records must be retained for a period of three years from the date of dispensing.

(5) Dispensing take-out doses. The program physician or registered pharmacist shall dispense all take-out doses, unless prior to patient's arrival the appropriate doses are repackaged by the program physician or pharmacist for provision by an RN or LVN. The doses shall have been prepared in selected strengths, with information on the label as required by paragraph (6)(A), (E), (G), and (H) of this subsection. The doses shall be stored and identified to allow accurate selection of a correct dose. If an RN or LVN provides the take-out doses to a patient. the nurse shall add to the label at the time of issue, information required in paragraph (6)(B), (C), (D), and (F) of this section. All take-out doses will be provided in liquid form with a preservative and in a container in compliance with the Poison Prevention Packaging Act of 1970 (Public Law 91-601, 84 Stat. 1670-74., 15 United States Code, 1491-75), and the Code of Federal Regulations, Title 16, Part 1700.

(6) Take-out labels. The label on each take-out dose shall contain the following information:

(A) name, complete address, and telephone number of the NTP;

(B) "Date Dispensed _____";

(C) full name of physician who ordered the narcotic drug;

(D) patient's full name;

(E) the name of the narcotic drug in letters twice as large as other print on the label (the strength of the drug shall not be placed on the label);

(F) the phrase "To Be Taken On _____." with the appropriate numerical date for the month, day, year shall be entered into the blank space;

(G) the phrase "WARNING: Federal Law prohibits transfer of this drug to any person other than for whom prescribed. This drug may be FATAL to any person other than for whom prescribed"; and

(H) additional caution labels may be used if approved by the medical director and the SNDTA.

(h) Specific requirements.

(1) Medical services. The medical director shall assume responsibility for all medical services performed by the program. The medical director is responsible for ensuring that the program is in compliance with all federal, state, and local laws and regulations regarding medical treatment

of opiate addiction. The medical director shall:

(A) ensure that evidence of current physiologic dependence and a one year documentation of addiction have been documented in the patient's record before the patient receives the initial dose of a narcotic drug;

(B) ensure that a medical assessment (including a medical history, a physical examination, physiological dependence, length of history of addiction, and documentation of addiction) has been completed and documented in the patient's record before the patient receives the initial dose of a narcotic drug. The program physician may delegate the physical examination in accordance with paragraph (3)(H) of this subsection to a physician's assistant or an RN certified as a nurse practioner. The program physician may delegate to an LVN, only those physical examination acts set forth in paragraph (3)(H)(i), (ii), (v), and (vi) of this subsection;

(C) ensure that appropriate laboratory studies have been performed and reviewed in accordance with the sections of this title;

(D) ensure that all medical orders are signed or countersigned as required by federal and state law (Such medical orders include, but are not limited to, the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home medication for an emergency situation,)

(E) ensure that all patients receive, at a minimum, an annual assessment conducted face-to-face by a program physician, which includes, but is not limited to, an evaluation of the progress of the patient or lack thereof in treatment, and a justification for continuation of treatment recorded in the patient's record and signed by the program physician and primary counselor;

(F) ensure that treatment plans are reviewed and countersigned by a program physician at least annually;

(G) ensure that justification is recorded in the patient's record for reducing the frequency of clinic visits for observed drug ingesting, providing additional take-home medication under exceptional circumstances or when there is physical disability, or prescribing any medication for physical or emotional problems; and

(H) ensure that take-out doses of a narcotic drug are provided in accordance with subsection (g)(5) and (6) of this section.

(2) Operating hours and authorized closings.

(A) Each NTP shall prescribe the specific hours for medicating patients in order that the program hours of operation are reasonably accessible to patients. Each NTP shall be open, as a minimum, six hours each day, five days per week, and on Saturday and Sunday a minimum of one hour medication time must be accessible between 6 a.m. and 6 p.m provided an NTP may close on a Saturday or Sunday if there are no detoxification or Phase I patients. A minimum of one hour of medicating time must be accessible daily before 8 a.m. and one hour after 5 p.m. An NTP will not be required to provide one hour of medication time before 8 a.m. or after 5 p.m if all program patients are able to receive required observed doses during the hours of 8 a.m. to 5 p.m without a special exception. All patients must be given adequate notice, at least 15 days prior to the event of a holiday or other closing. Provision must be made to medicate detoxification patients with observed doses on holidays and other times the program may be closed. Services must be accessible to the patients for whom take-out medication is not clinically advisable or allowed under these sections.

(B) The program director of each NTP may designate 12 days each year as holidays. The designated holidays must be reported to the SNDTA during the month of December for the next calendar year. During each holiday period Phase I and long-term detoxification patients shall be limited to only one take-out dose; Phase II and Phase III patients shall be limited to three take-out doses; Phase IV and Phase V patients shall be granted only the take-out doses authorized in paragraph (5)(D)(iv) and (v) of this subsection. Short-term detoxification patients shall not be granted take-out doses. Holiday take-out doses shall not be combined with other take-out authorizations which will increase the number of total take-out doses dispensed at one time beyond those authorized in this subsection.

(C) The program director, with the approval of the medical director, may operate a NTP on a limited staff for a three day consecutive period of time to allow time for staff-training once a year. Patients shall receive observed doses and be granted take-home doses only in accordance with those granted for holiday closings in paragraph (2)(B) of this subsection.

(3) Minimum standards for admission.

(A) An individual must agree to comply with these sections and the NTP's rules in accordance with §229.293 (h) of this title (relating to Organization) to be admitted to a NTP.

(B) Program intake procedures must include, but is not limited to, the following elements:

(i) interview with the intake counselor;

(ii) physical examination by the program physician;

(iii) interview with the assigned primary counselor; and

(iv) applicant's signature on all consent forms, in accordance with subparagraph (K) of this paragraph.

(C) An individual aged 18 or over may be admitted as a patient for approved narcotic drug maintenance treatment only if the program physician determines that the individual is currently physiologically addicted to heroin or other opioid drugs and became physiologically addicted at least one year prior to application for admission to approved narcotic drug maintenance treatment. A one-year history of addiction means that an applicant for admission to a NTP was physiologically addicted to heroin or other opioid drugs at a time at least one year prior to application or admission to a narcotic treatment program. The applicant's addiction must have been continuous during the year immediately prior to the application for admission even though the individual's use of opioid drugs during that period of time may have been episodic. In the case of an individual for whom the exact date on which physiological addiction began cannot be ascertained, the admitting program physician may, by utilizing observation and reasonable clinical judgment, conclude that there was physiological addiction at a time one year prior to application for admission and admit the addict to approved narcotic drug maintenance treatment. Justification for a one year documentation of addiction date shall be recorded in the patient's record by the program physician.

(D) The program physician may consider signs and symptoms of drug intoxication, evidence of use of drugs through urine drug screen, and needle marks on the epidermis in determining the current physiological dependence of the patient. Other evidence of current physiological dependence must be obtained by noting early signs of withdrawal to include lacrymation, rhinorrhea, pupilary dilation, or pilo erection during the initial period of abstinence. Body temperature, pulse rate, blood pressure, and respiratory rate must also be taken into consideration by the program physician.

(E) The program physician must record in the patient's record the criteria used to determine the patient's current physiological addiction and a one-year history of the addiction. The final decision which determines physiological addiction is required to be made by the program physician. The program physician must certify in the patient's record that the patient fulfills the requirements for admission to approved narcotic drug maintenance treatment. This review must be completed before the initial dose of an narcotic drug is administered unless the program physician determines an applicant is in severe withdrawal in that event up to 30 mg of methadone may be administered during the in-take procedures if, in the clinical judgment of the program physician, in-take procedures cannot proceed because of the applicant's opiate withdrawal symptoms. Any other medication prescribed for the patient shall be documented in the patient's record.

(F) There shall be documented evidence that the initial dose and the follow-up dose are ordered by a program physician prior to each dose administration. The first dose of methadone shall not exceed 20 mg. After a reasonable time, as determined after observation by the program physician, P.A., or an RN, and when the patient continues to have withdrawal symptoms, the program physician may order an additional dose of 10 mg or less of methadone. Justification for an additional dose over 30 mg must be documented in the patient's record by the program physician. The initial dose of methadone may be given before the results of laboratory tests are reviewed, but not before blood and urine specimens are taken.

(G) A methadone dose of 100 mg must be justified with results of a plasma or serum methadone level determination, taken 24 hours after an observed dose, of less than 0.4 mg per liter and the SNDTA notified in written fonn within 72 hours.

(H) Each patient, on admission to a program, is required to have a physical examination by a program physician; or an RN, certified as a nurse practitioner, or PA acting under standing delegation orders of the program physician in accordance with Title 22 Chapter 193, concerning standing delegation orders, promulgated by the Texas State Board of Medical Examiners. At a minimum, this evaluation is required to consist of a medical and drug use history which includes the required history of opiate dependence, evidence of current physiologic dependence, one year documentation of addiction (unless excepted by these sections), and a physical examination to include:

(i) collection of blood and urine for laboratory tests;

(ii) performance of a tuberculin skin test;

(iii) examination for evidence of infectious diseases;

(iv) examination for evidence of pulmonary, hepatic, and/or cardiac abnormalities;

(v) examination for evidence of dermatologic sequelae of addiction;

(vi) recording of vital signs–(T.P.R. B.P.);

(vii) general medical assessment to include head, ears, eyes, nose, throat (thyroid), chest (heart, lung, breasts), abdomen, extremities, skin, and neurological assessment;

(viii) program physician's overall evaluation of the patient;

(ix) laboratory tests must include results for:

(I) serological test for syphilis;

(II) tuberculin skin test; if positive, a chest X-Ray or other appropriate test;

(III) drug screen in accordance with paragraph (7)(B) of this subsection;

(IV) routine and microscopic urinalysis;

(V) complete blood count and differential;

(VI) liver function profile test; and

(VII) other laboratory tests if determined to be clinically indicated by the program physician such as an Australian Antigen Hb Ag testing (HAA), an EIA test for HTLV-III virus antibodies, a pregnancy test, a pap smear, and/or an E.K. G.

(I) Each patient seeking admission or readmission for treatment services is required to be interviewed by a program counselor to determine the appropriate treatment plan for the patient and document the patient's drug use, personal, and medical history.

(i) A patient's history includes information relating to his or her educational and vocational achievements. If a patient has no such history, i.e., he or she has no formal education or has never had an occupation, this requirement is met by writing this information in the patient's history.

(ii) A primary counselor shall be assigned by the program director to develop, implement, and evaluate the patient's initial and periodic treatment plan and to monitor a patient's progress in treatment. The primary counselor shall enter in the patient's record the counselor's name, the contents of a patient's initial assessment, and the initial treatment plan. The primary counselor shall make these entries immediately after the patient is stabilized on a drug dose or within four weeks after admission, whichever is sooner.

(I) Initial treatment plant. The initial treatment plan shall contain a statement that outlines realistic short-term treatment goals which are mutually acceptable to the patient and the program. The initial treatment plan is also required to spell out the behavioral tasks a patient must perform to complete each short-term goal and the medical, psychosocial, economic, legal, or other supportive services that a patient needs immediately. The plan is also required to identify the frequency with which these services should to be provided to the patient.

(II) Periodic treatment plan evaluation. The primary counselor shall review, re-evaluate and alter, where necessary, each patient's treatment plan at least once each 90 days during the first year of treatment, and then at least twice a year after the first year of continuous treatment. The periodic treatment plan must become a part of each patient's record and be signed and dated by the primary counselor and countersigned and dated by the supervisory counselor. At least once a year, the program physician shall date, review, and countersign the treatment plan recorded in each patient's record by the primary counselor. When appropriate, the treatment plan and progress notes should deal with the patient's mental and physical problems, apart from drug abuse. The treatment plan is required to include the name of, and the reasons for prescribing, any medication for emotional or physical problems.

(J) The program director shall require that participation by the patient in a NTP is informed and voluntary, and that all relevant and known facts concerning the use of methadone or other approved narcotic drug are clearly and adequately explained to the patient. The program director must require an orientation session with the patient which includes admission and discharge policies, rules, procedures, activities, and concepts of the NTP. Other interested individuals may attend the orientation session with the written consent of the patient. The patient must be informed of the NTP's in-house patient grievance protocol and procedures. Program personnel shall not discourage or prevent a patient from contacting the SNDTA.

(K) Each patient must sign, for each episode of continuous treatment and with full knowledge and understanding of the content, a lawful written consent to:

(i) treatment for dependence on opioid drugs which includes the administration of a narcotic drug (Federal Form FDA-2635 Consent to Methadone Treatment may be used);

(ii) release of information to the SNDTA central registry to prevent duplicate enrollment in narcotic treatment programs in accordance with the Code of Federal Regulations, Title 42, Part 2;

(iii) collection of urine specimens for drug screen tests on a random unannounced basis in accordance with paragraph (7) of this subsection;

(iv) comply with the sections of the NTP as required in §229.293 (h) of this title (relating to Organization);

(v) collection of blood specimens for laboratory tests ordered by the program physician; and

(vi) if a woman is pregnant, appropriate treatment in accordance with paragraph (4)(B) of this subsection (Federal Form FDA-2635–Consent to Methadone Treatment may be used).

(L) Each individual shall pay the fee established by the sponsor for the first week of treatment prior to the admission procedures. Thereafter the fee for NTP services shall be paid, as a minimum one week in advance. In the event a patient does not pay the required fee, detoxification shall be initiated in accordance with paragraph (8) of this subsection. The patient shall pay for treatment with United States currency and is prohibited from paying for treatment with his or her personal services or other material goods except United States currency or third party payors.

(M) Each female patient must be fully informed of the possible risks to a pregnant woman and her unborn child if methadone or other approved narcotic drug is ingested, must be told that safe use in pregnancy has not been established in relation to possible adverse effects on fetal development and that the newborn child will be addicted to opioid drugs. This must be documented on a signed and dated lawful consent which also provides consent for the release of information pursuant to the Code of Federal Regulations, Title 42, Part 2.

(4) Exemption from minimum admission standards. An exemption from paragraph (3) of this subsection, may be granted when certain conditions exist.

(A) A person who has resided in a penal or involuntary in-patient institution for one month or longer may be admitted to an NTP within 14 days prior to release or discharge, or within six months after release from such an institution without documented evidence to support findings of physiological addiction, provided the person would have been eligible for admission before incarceration or institutionalization, and in the clinical judgment of the program physician, treatment is medically justified. Documented evidence of prior residence in a penal or involuntary in-patient institution, evidence of all other findings, and the criteria used to determine the findings must be recorded in the patient's record and signed by the program physician.

(B) An exemption from paragraph (3) of this subsection, for pregnant patients shall be granted under certain conditions.

(i) A pregnant woman, who has had a documented addiction to heroin or other opioid drugs within a narcotic treatment program and who may be in direct jeopardy of returning to illegal use of opioid drugs during the pregnancy, may be placed on narcotic drug maintenance treatment. For such patients, evidence of current physiological addiction to opioid drugs is not needed if the program physician certifies the pregnancy and finds treatment to be medically justified. Evidence of all findings shall be recorded in the patient's record by the admitting program physician before the initial dose of a narcotic drug is administered to the patient. Pregnant patients shall be offered the opportunity for prenatal care either by the NTP or by referral to an appropriate health care provider. If a NTP cannot provide direct prenatal care, it shall establish a system of referral to prenatal care for the pregnant patients. If there are no publicly funded prenatal referral resources to serve those who are indigent, and if the program cannot provide such services or if the patient refuses the services, the NTP shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as part of its counseling service. Clinical records shall reflect the nature of prenatal support provided by the program. If the patient is referred for prenatal services, the practitioner to whom the patient is referred must be notified that she is in narcotic drug maintenance treatment, provided that the notification is in accordance with a consent for the release of information pursuant to the Code of Federal Regulations, Title 42, Part 2. If a pregnant patient refuses prenatal care or appropriate referral, the NTP personnel must attempt to obtain a written statement in which the patient acknowledges with her signature that she had the opportunity for the prenatal care but refused it.

(ii) Following delivery, the program physician shall request of the hospital and/or physician or mid-wife who performed the delivery, a summary of the delivery and treatment for the patient and baby. Appropriate medical treatment for the patient and the newborn shall be provided based upon information received from the hospital and/or physician or mid-wife who delivered the newborn and provided post natal care.

(iii) Within three months after termination of pregnancy, the program physician shall enter an evaluation of the patient's condition and either admit her as a regular maintenance patient or detoxify her to a drug free status in accordance with paragraph (8) of this subsection or terminate the patient from the program in accordance with paragraph (10) of this subsection. The program physician shall use the criteria set out in subsection (e) of this section as a guide to admit her as a maintenance patient.

(C) Patients previously treated in methadone maintenance treatment and voluntarily detoxified may be readmitted to an NTP without evidence to support findings of current physiological addiction up to two years after discharge from an approved narcotic drug maintenance treatment. There must be evidence of current use of heroin or other opioid drugs. The NTP must be able to document prior maintenance treatment of six months or more during previous treatment and the admitting program physician must be able to determine that readmission to an approved narcotic drug maintenance treatment is medically justified. Documented evidence of prior treatment, evidence of current use, and medical justification of treatment must be recorded in the patient's record by the admitting program physician. If there is no evidence of current use of heroin or other opioid drugs an attempt to refer the patient to an appropriate treatment facility must be made. Such facility may be a psychiatric institution or a drug free rehabilitation or vocational rehabilitation facility. A patient admitted under this subsection must be placed in Phase I. No credit shall be given for time in treatment, in order to reduce attendance, for prior clinic attendance if patient has been absent from treatment three months or more.

(D) Patients under 18 years of age may be treated under certain conditions.

(i) An individual under 18 years of age is required to have had two documented attempts at short-term detoxification to be eligible for narcotic drug maintenance treatment. A one-week waiting period is required after a narcotic drug detoxification attempt before another attempt is repeated. The program physician must be able to document in the patient's record that the patient continues to be currently physio-

logically addicted to heroin or other opioid drugs in accordance with paragraph (3)(D) of this subsection.

(ii) An individual under 18 years of age shall not be admitted to narcotic maintenance treatment unless a parent legal guardian or responsible adult designated by an authority of state government to remove a minor's disability, completes a written consent to narcotic drug maintenance treatment for the minor.

(5) Mandatory program attendance.

(A) The program physician and the primary counselor shall consider the following in determining whether a patient is responsible in handling an narcotic drug on a take-out basis:

(i) absence of abuse of narcotic drugs, alcohol, or other drugs of abuse within the last three months;

(ii) no unauthorized absence in program attendance within the last three months;

(iii) absence of behavioral problems at the program within the last three months;

(iv) absence of known recent criminal activity, including illicit drug sales or possession within the last three months;

(v) stability of the patient's home environment and social relationships;

(vi) length of time in maintenance treatment;

(vii) assurance, by the patient, that take-home medication can be safely stored within the patient's home; and

(viii) whether the rehabilitative benefit to the patient derived from decreasing the frequency of NTP attendance outweighs the potential risks of diversion of the narcotic drug to illicit use.

(B) When considering patient responsibility in handling a narcotic drug, the program physician must consult with and consider the recommendations of the primary counselor and other staff members most familiar with the lifestyle and rehabilitative progress of the patient.

(C) The requirement of time in treatment is a minimum reference point after which a patient may be eligible to decrease attendance and for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to reduced attendance. Reduced attendance must be requested by the patient and shall not be automatically granted by program physician after the patient has met the time requirements. A program physician may deny or rescind the take-home medication privileges of a patient at any time and for any reason regardless of time in treatment.

(D) Each patient shall attend the NTP daily except when authorized and provided take-out doses. The NTP shall establish attendance schedules prohibiting take-out doses in excess of those allowed in this subsection.

(i) Phase I. The patient must receive all daily drug doses under observation from the date of admission through the first 10 days of treatment. Patients receiving 100 mg or above or patients in short--term detoxification must remain in Phase I.

(ii) Phase II. The patient must receive a daily drug [illegible] six days per week under observation. The program physician, upon the request of the primary counselor, may authorize a patient to receive one take-out dose per week, 10 days after the admission date, if the patient has complied with clause (i) of this subparagraph. The program physician must justify and sign in the patient's record the change to Phase II according to subparagraphs (A), (B), and (C) of this paragraph, and if appropriate paragraph (6)(A) and (B) of this subsection.

(iii) Phase III. The patient must receive a daily drug dose three times per week under observation. The program physician, upon request of the primary counselor, may authorize a patient to receive four take-out doses with three observed doses per week 90 days after admission if the patient has complied with clause (5)(D)(ii) of this subparagraph. No more than two take-out doses shall be authorized at one dispensing time. The program physician must justify and sign in the patient's record the change to Phase III according to subparagraphs (A), (B), and (C) of this paragraph, and if appropriate to paragraph (6)(A) and (B) of this subsection.

(iv) Phase IV. The patient must receive a daily drug dose twice a week under observation. The program physician upon the request of the primary counselor, may authorize a patient to receive five take-out doses with two observed doses per week two years after admission date if the patient has complied with clause (5)(D)(iii) of this subparagraph. No more than three take-out doses shall be dispensed at one time and each dose shall not exceed 80 mg unless justified by a plasma or serum methadone level determination, taken 24 hours after an observed dose of methadone, and has verified a serum methadone level of less than 0.4 mg per liter. The program physician must justify and sign in the patient's record the change to Phase IV according to subparagraphs (A), (B), and (C) of this paragraph and if appropriate, paragraph (6)(A) and (B) of this subsection.

(v) Phase V. The patient must receive one daily drug dose per week under observation. The program physician, upon the request of the primary counselor, may authorize a patient to receive six take-out doses with one observed dose three years after the admission date if the patient has complied with clause (iv) of this subparagraph. Each dose shall not exceed 60 mg unless justified by a plasma or serum methadone level determination, taken 24 hours after an observed dose of methadone, and has verified a serum methadone level of less than 0.4 mg per liter. The program physician must justify and sign in the patient's record the change to Phase V according to subparagraphs (A), (B), and (C) of this paragraph, and if appropriate, paragraph (6)(A) and (B) of this subsection.

(6) Exemptions from mandatory program attendance schedules.

(A) If the patient has a physical disability or illness, as determined by the program physician, which will diminish the patient's ability to conform to the applicable mandatory schedule, the patient may be permitted a temporarily reduced schedule provided the patient is also found to be responsible in handling methadone in accordance with paragraph (5)(A) and (B) of this subsection. The program physician must obtain medical records and other relevant information to substantiate the physical disability, if a diagnosis has been made by another physician, and the condition is not readily apparent to the program physician. This must be documented in the patient's record. In such circumstances, the program physician may grant no more that a six-day supply of take-home medication. The six-day take-home doses granted due to physical disability shall not exceed four consecutive weeks unless the program physician does a complete re-evaluation of the patient and documents valid justification for each four-week period. If an extension is to be granted beyond the four-week limit there must be a notification, with justification in written form to the SNDTA, within 10 days after the evaluation.

(B) Because of exceptional circumstances such as employment conflict, personal or family crises, travel, or other hardship which causes the patient to become unable to conform to the applicable mandatory schedule, the patient may be permitted a reduced schedule of program attendance, provided the patient is found to be responsible in handling an approved narcotic drug according to paragraph (5)(A) and (B) of this subsection. The rationale for an exemption from a mandatory attendance schedule must be approved and justified by the program physician upon the request of the primary counselor. A request by the primary counselor to extend the reduction in mandatory program attendance up to 21 days may be granted by the program physi-

cian, if justified in accordance with paragraph (5)(A) and (B) of this subsection, and if the narcotic drug is provided in a manner that assures each daily dose will be delivered to the patient on the day designated on the drug bottle label, and if the patient or other person(s) will not have access to the remaining drug doses until the date for which the dose is labeled to be taken. The 21-day take-out doses shall not be granted to patients in Phase I. Reduced attendance treatment shall be justified during each visit to the NTP. The patient shall receive appropriate counseling and rehabilitative services.

(C) An RN/LVN may transport a narcotic drug to another location for a daily observed dose if the dose is prepared and labeled in accordance with subsection (g)(6) of this section, prior to leaving the NTP. A patient receiving a narcotic drug in this manner must also receive appropriate counseling by a qualified counselor who may be employed by institutions other than the enrolled NTP. Such counseling shall be documented in patient's record. All narcotic drug dose(s) must be consumed by the patient(s) under observation by an RN, LVN or physician or returned to the program. Not more than six take-out doses for each patient may be left in the custody of a detention facility physician or RN/LVN for later administration. When take-out doses are left in the custody of the detention facility physician or RN/LVN, the NTP must secure records which document the dose was administered correctly by an RN or an LVN or a licensed physician. A record of custody of the narcotic drug dose(s) and identification of the name and license number of each physician and/or RN/LVN involved with the drug administration must be secured by the NTP personnel. A narcotic drug shall be provided to incarcerated patients only when the patient was enrolled in a NTP at least 10 days prior to incarceration. A NTP other than the one in which the incarcerated patient was enrolled may provide services to the patient after transferring the patient's records from the narcotic treatment program in which he/she was enrolled. The patient's written consent for the release of information must be obtained prior to a request for records from another narcotic treatment program.

(7) Minimum urine testing. The program director shall ensure that the test results are not used as the sole criterion to force a patient out of treatment, but are used as a guide to change treatment approaches. The program director shall also ensure that when test results are used, presumptive laboratory results are distinguished from results that are definitive.

(A) Upon admission of each patient, prior to administration of the initial dose of a narcotic drug, a urine specimen shall be taken and submitted to a laboratory for drug screen.

(B) A drug screen is a qualitative analysis to determine the presence of methadone, opiates, amphetamines, benzodiazepines, cocaine, barbiturates, and any other substance the program director may indicate.

(C) One random urine specimen shall be taken from each patient every month as a minimum and tested as follows:

(i) patients with less than one year in treatment and those receiving six-day take-out doses shall have a urine specimen submitted to a laboratory for a drug screen, as a minimum, every 30 days; or

(ii) patients with more than one year in treatment shall have a urine specimen submitted to a laboratory for a drug screen, as a minimum, once each calendar quarter.

(D) A urine specimen from each patient shall be tested annually for tetrahydrocannabinols.

(E) If the urine drug screen is performed at the site of the NTP, the screen procedures shall be validated with proficiency tests on an ongoing basis. The proficiency tests must be provided by an institution approved by the SNDTA.

(F) Each urine specimen must be taken according to approved rules of the NTP to prevent falsification.

(8) Short-term detoxification treatment minimum standards.

(A) The narcotic drug is required to be administered daily, under close observation, in reducing dosages over a period not to exceed 30 days. All requirements for maintenance treatment apply to short-term detoxification treatment with the following exceptions.

(i) Take-home medication shall not be allowed during short-term detoxification.

(ii) A history of one year physiologic dependence is not required for admission to short-term detoxification.

(iii) Patients who have been determined by the program physician to be currently physiologically narcotic dependent may be placed in short term detoxification treatment, regardless of age.

(iv) No laboratory test or analysis is required except for the initial drug screening test.

(v) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are not necessary for short-term detoxification patients. However, a primary counselor must be assigned by the program to monitor a patient's progress toward the goal of short-term detoxification and possible drug-free treatment referral.

(B) The program physician shall:

(i) ensure that evidence of current physiologic dependence is determined in accordance with paragraph (3)(D) of this subsection, and exceptions to criteria for admission are documented in the patient's record before the patient is admitted as a detoxification patient and receives the initial drug dose;

(ii) ensure that a physical examination in accordance with paragraph (3)(H) of this subsection. A physical examination shall be done before the patient receives the initial drug dose (except that in an emergency situation, the initial dose may be given before the physical examination);

(iii) ensure that appropriate laboratory studies in accordance with paragraph (3)(H)(ix) of this subsection, have been performed and reviewed;

(iv) ensure that all medical orders are signed or countersigned as required by federal or state law (Such medical orders include, but are not limited to, the initial medication orders and all subsequent medication order changes).

(C) A patient is required to wait at least seven days between concluding a short-term detoxification treatment episode and beginning another treatment episode. Before a short-term detoxification attempt is repeated or long-term detoxification is instituted, the program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on opiate drugs. The provisions of these requirements apply to both in-patient and out-patient short-term detoxification treatment.

(D) Short-term detoxification shall not be a treatment for a pregnant patient unless a full clinical and medical justification is written in the patient's record by the program physician.

(9) Long-term detoxification treatment.

(A) The narcotic drug is required to be administered on a regimen designed for the patient to reach a drug-free state and to make progress in rehabilitation in 180 days or less. All requirements for maintenance treatment apply to long-term detoxification treatment with the following exceptions

(i) The long-term detoxification treatment patient shall be under observation while ingesting the drug at least

six days a week (This clause does not apply to hospital inpatient treatment).

(ii) A history of one-year physiologic dependence is not required for admission to long-term detoxification.

(iii) Patients, who may be under 18 years of age, who have been determined by the program physician to be currently physiologically dependent on opiate drugs may be placed in long-term detoxification treatment.

(B) The program physician shall document in the patient's record that short-term detoxification has not enabled or will not enable the patient to be drug free without opiate drug withdrawal symptoms before long-term detoxification may begin. The program physician may place a patient directly into long-term detoxification, without a short-term detoxification episode, if the primary counselor and program physician determine from the information available, from the physical examination, and the psychological condition of the patient, that short-term detoxification may be ineffective and cause the patient to terminate treatment.

(C) An initial drug screening test is required for each patient. At least one additional random test must be performed monthly on each patient during long-term detoxification in accordance with paragraph (7) of this subsection.

(D) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients in accordance with paragraph (3)(I)(ii) of this subsection, are also required for long-term detoxification patients except that the required periodic treatment plan evaluation is required monthly.

(E) A patient is required to wait at least seven days between concluding a long-term treatment episode and beginning another episode of treatment. Before a long-term or short-term detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again currently physiologically dependent on opiate drugs in accordance with paragraph (3)(D) of this subsection. These requirements apply to both in-patient and out-patient long-term detoxification treatment.

(F) A patient who has completed two long-term detoxification treatments and continues to exhibit symptoms of opiate drug dependence and/or withdrawal symptoms shall not be admitted to another episode of detoxification treatment and may be placed into approved narcotic drug maintenance treatment.

(G) A pregnant patient shall not be placed in long-term detoxification treatment.

(10) Involuntary patient termination.

(A) There will be occasions when patients must be terminated from approved narcotic drug treatment. Patients that may be in this category are those who frequently and persistently abuse opiate or other drugs, become chronic abusers of alcohol, become or continue to be actively involved in criminal behavior, attempt to sell or otherwise dispose of a prescribed narcotic drug by any illicit means, and/or who persistently fail or refuse to adhere to the rules of the NTP in which they are enrolled. Such a patient must be given the option to be placed into detoxification treatment in accordance with paragraph (8) or (9) of this subsection. If the patient refuses consent, or exhibits violent, dangerous and/or unacceptable behavior, the program physician or the program director may immediately terminate the patient's treatment. An attempt must be made to refer the patient to a drug free treatment facility as clinically indicated, such as a detoxification hospital, psychiatric hospital, a rehabilitation facility, a vocational facility, or a psychiatric professional practitioner. Such action must be documented in the patient's record and reported to the SNDTA.

(B) Each NTP shall have a written policy, approved by the medical director and the program director, which concerns involuntary termination from narcotic drug maintenance treatment. The policy shall describe the rights of a patient as well as the responsibility and rights of the NTP personnel.

(11) Incarcerated patients. If NTP personnel become knowledgeable that a patient is incarcerated while on maintenance treatment, within a county in which the NTP provides services, the program director must document an attempt to secure the cooperation of the criminal justice system to permit humane drug detoxification of the patient. The program director may arrange, with the approval of the criminal justice system to provide observed doses to an incarcerated patient in accordance with paragraph (6)(C) of this subsection.

(12) Voluntary drug free discharge.

(A) All individuals placed on a narcotic drug maintenance treatment should be encouraged to become drug free. Some individuals with a long history of narcotic drug dependency may need special consideration in this regard. Withdrawal from narcotic drug maintenance must be discussed with all patients at least once a year by the primary counselor. Justification for continuation shall be documented in the patient's record and signed by the primary counselor and program physician.

(B) A voluntary drug free discharge plan counseling session shall be designed to provide direction to the patient for a life style which may maintain a drug-free status and be documented in the patient's record as a part of a rehabilitation plan.

(C) The program physician, upon request of the primary counselor, may place a maintenance patient directly into detoxification treatment in accordance with paragraph (8) or (9) of this subsection, if medically justified.

(13) Rehabilitation.

(A) A minimum of two documented one-on-one counseling session must be provided weekly to each patient while in Phase I. One documented one- on-one counseling session must be provided to the patient every other week while in Phase II and monthly while in Phases III. A patient must be provided a one-on-one or a group counseling session once a quarter if in Phase IV or V. A patient who has completed three years of treatment without a readmission and is in good standing with NTP sections, is able to demonstrate a stable employment and lifestyle environment, and has no connection or involvement with the illegal drug culture may reduce counseling to a once a year therapeutic session. Counseling activity must be documented in the patient's record. Phase classifications are described in paragraph (5)(D) of this subsection.

(B) An individualized plan for rehabilitative and support services for the patient must be developed within 30 days of the admission. This plan will be a compliment to the admission treatment plan. The plan must be reviewed and updated by the primary counselor at least quarterly.

(14) Central registry.

(A) The sponsor of a NTP shall participate in central registry activities for the purpose of sharing patient identifying information with other narcotic treatment programs as requested by the SNDTA to prevent the multiple enrollment of patients in narcotic treatment programs.

(B) A narcotic drug shall not be provided to a patient who is known to be currently enrolled in another narcotic treatment program except as allowed under paragraph (15) of this subsection.

(C) The patient shall always report to the same narcotic treatment pro-

gram unless prior approval is requested by the parent narcotic treatment program's program physician, or program director for treatment to be provided at another narcotic treatment maintenance program in accordance with paragraph (15) of this subsection.

(D) A central registry shall be established by the SNDTA, which will maintain a record of patient's identification and the NTP to which each is enrolled. Information will be maintained in accordance with confidentiality regulations in the Code of Federal Regulations, Title 42, Part 2, and Title 21, Part 291.505, paragraph g.

(E) Each NTP shall report to the central registry specific information.

(i) Each person admitted as a new patient, re-admitted to the same clinic, admitted from another narcotic treatment program as a permanent transfer patient, transferred to another narcotic maintenance or detoxification program, or discharged (terminated) from maintenance or detoxification treatment shall be identified and reported to the central registry located at TDH, Division of Food and Drugs at Austin, by telephone followed by a written report within 10 days.

(ii) Each NTP's report to the central registry shall identify and provide the following information for each patient:

(I) synthetic narcotic program (SNP) number;

(II) date action was taken (YR-MO-DA);

(III) patient identification number;

(IV) action taken identified as:

(-a-) new patient (NP);

(-b-) transfer in-patient (TIP);

(-c-) transfer out-patient (TOP);

(-d-) terminated patient (TP);

(-e-) re-admitted patient (RP); or

(-f-) temporary transfer patient (TTP);

(V) each patient of each NTP shall be identified as follows:

(-a-) the eight digit number of the Texas drivers license or Texas Department of Public Safety identification card;

(-b-) color of patient's eyes such as brown (BR), blue (BL), green (GR), hazel (HZ);

(-c-) patient's barefoot height to the next highest number in inches;

(-d-) patient's date of birth, (YR-MO-DA);

(-e-) gender, (M) or (F); and

(-f-) skin color, black (B), white (W), other (0).

(15) Temporary transfer.

(A) A request for a temporary transfer of a patient, which shall not exceed 30 days, shall not be approved until the parent NTP has provided valid documentation of date admitted to that NTP, date patient was diagnosed as a narcotic addict and began treatment, any physical, mental or social condition which may affect treatment, current dose of methadone, or other approved narcotic drug along with a preceding 30-day dose history, patient's home address at the parent NTP, parent NTP's name, address, and telephone number along with the name of the current NTP's program physician and his/her state license number. A temporary transfer patient shall receive only observed doses, unless the parent program physician provides to the temporary transfer NTP a signed justification, in accordance with paragraph (5)(A), (B) and (C) of this subsection, for the requested take-out doses, which shall not exceed the take-out doses allowed in paragraph (5)(D)(iii) of this subsection (Phase III). The program physician of the program providing the temporary treatment may grant take-home doses, not to exceed four, to allow the patient time to return to the parent NTP. If three or more doses are missed after the initial dose is administered, treatment of the patient shall be terminated in accordance with paragraph (10) of this subsection. A patient on temporary transfer to another narcotic treatment program who has not returned within 30 days shall be discharged from the parent NTP and the temporary transfer program notified of the discharge and copies of the treatment record sent to the temporary transfer program, upon their request, as though the patient were a permanent transfer patient in accordance with subsection (e) of this section.

(B) Temporary transfer patient records shall:

(i) be filed separately in a readily available fashion; and

(ii) provide the patient's complete temporary address, a lawful written informed consent, a record of vital signs in accordance with paragraph (3)(H)(vi) of this subsection, the physician's order for the narcotic drug administered, any counseling provided the patient, a record of the narcotic drug doses administered, and the date of termination from temporary treatment. No laboratory work is required unless deemed necessary by the program physician. A dose of 100 mg or above, shall not be administered to temporary transfer patients. Incomplete records or refusal to provide information by the parent narcotic treatment program shall require the requesting NTP to deny treatment as a temporary transfer patient.

(C) Individuals who apply for treatment and do not consent to these sections and the NTP program rules shall not be provided temporary transfer treatment.

(D) If an individual is found trying to secure duplicate doses of methadone or other approved narcotic drug, he/she must be referred back to the parent narcotic treatment program/NTP. A written statement documenting the incident must be forwarded to the parent narcotic treatment program/NTP and a copy to the SNDTA. The program physician of the parent NTP must evaluate the patient as soon as medically feasible for continuation of approved narcotic drug treatment or possible termination in accordance with paragraph (10) of this subsection.

*§229.298. Approved Hospital Narcotic Drug Detoxification Services.*

(a) Permit.

(1) A hospital providing treatment to patients with a primary diagnosis as an opiate addict must apply for and be issued a synthetic narcotic drug permit by the department which shall remain in effect until suspended or revoked by the department or surrendered by the holder.

(2) The Permit shall be issued subsequent to approval of the application as required in subsection (b) of this section, and payment of the fee as required in subsection (c) of this section.

(3) Failure to pay the appropriate fee required in subsection (c) of this section, is grounds for suspension, revocation, or denial of the permit as provided in §229.295(f) of this title (relating to Approval, Denial, Revocation).

(4) A hospital must be licensed as a chemical treatment facility under Texas Revised Civil Statutes, Article 5561cc or have received from TCADA an exemption from licensure.

(b) Application.

(1) The hospital administrator must submit an application (Hospital Narcotic Detoxification Treatment) provided by the SNDTA and a copy of Federal Form

FDA-2636 filed with the FDA and a copy of Federal Form DEA 363 filed with the DEA, in an application to receive a synthetic narcotic drug permit for in- patient narcotic drug detoxification.

(2) The hospital administrator shall submit to the FDA and the SNDTA the name of the pharmacist responsible for receiving and securing supplies of narcotic drug(s) for the treatment of opiate addicts. The individual responsible for supplies shall ensure that the only persons who receive supplies of narcotic drug(s) are those who are authorized to do so by federal or state law.

(3) The hospital administrator shall submit to the FDA and the SNDTA a general description of the hospital including the number of beds, specialized treatment facilities for drug dependence, and nature of patient care undertaken.

(4) The hospital pharmacist shall submit to the FDA and the SNDTA the anticipated quantity of narcotic drugs anticipated to be used per year for narcotic addict treatment.

(5) A member of the hospital medical staff shall be named by the administrator or chief of medical staff as the responsible physician for the narcotic drug detoxification service.

(6) A hospital pharmacy registered by the Texas State Board of Pharmacy must be registered as an NTP for detoxification by the DEA.

(7) The SNDTA shall approve or deny an application subsequent to the filing date of a complete application. Each supplement of information to the application will be considered an amendment that will establish a new filing date. Denial shall be in accordance with §229.295(f) of this title (relating to Approval, Denial, Revocation).

(c) Fees.

(1) A nonrefundable evaluation fee of $100 shall be submitted with the application for an inspection, evaluation of the application, and the first six months of operation. Subsequent to the approval the SNDTA will issue a fee-receipt to the hospital authorizing it to operate a narcotic drug detoxification service for a six-month period of time. The six-month evaluation fee shall not apply to change of location.

(2) After the fee and renewal form have been received by the SNDTA and provided the permit has not been suspended, revoked, or surrendered, a fee receipt will be issued for a 12-month period of time subsequent to the initial six months evaluation period. The effective date of the renewal receipt will be the day following the date of expiration of the current fee receipt. The synthetic narcotic drug permit and the current fee receipt must be posted in a conspicuous place within the premises of the hospital.

(3) The annual fee or relocation fee shall be $200. All fees are nonrefundable.

(4) The hospital administrator shall submit to the SNDTA an annual renewal fee as required in paragraph (3) of this subsection, and file a renewal form provided by the SNDTA. The hospital administrator must file the renewal form and submit the fee 30 days prior to the expiration of the current fee receipt.

(5) A permit issued by the SNDTA for the operation of a approved narcotic drug detoxification service in a hospital applies both to the hospital owner and to the place where the hospital is to be located. An appropriate fee in accordance with paragraph (3) of this subsection, must accompany requests to approve changes in narcotic drug detoxification services for a hospital. Change of ownership or relocation shall be approved by the SNDTA, FDA, and DEA prior to the date of start of operation. A new synthetic narcotic drug permit will be issued to a new owner or new location and the previous permit issued to the previous owner or location shall be surrendered and returned to the SNDTA.

(A) A person acquiring a narcotic drug detoxification unit operating with a current synthetic narcotic drug permit in a licensed hospital must submit a new application in accordance with subsection (b) of this section, and an evaluation fee as required in paragraph (1) of this subsection. The application will be approved or denied in accordance with subsection (b) of this section.

(B) A hospital who has been issued a synthetic narcotic drug permit and wishes to relocate must submit an application for a new permit as required in subsection (b) of this section, and pay a nonrefundable relocation fee in accordance with paragraph (3) of this subsection.

(C) The annual fee due date for an NTP, which has had a change of location, shall remain the same as established when the permit was initially issued to the NTP.

(d) Operation.

(1) Criteria for treatment.

(A) An opiate addict patient must be admitted according to hospital admitting procedures as an in-patient with a primary diagnosis of opiate addiction.

(B) The patient must be evaluated and a tentative detoxification dosage regimen in accordance with §229.297(h)(8) or (9) of this title (relating Operations Standards) written by the attending physician.

(C) The patient must be observed for withdrawal or other toxic symptoms which may indicate a dose change or other treatment.

(D) The patient shall be discharged as drug free on or prior to the expiration of 30 days or 180 days from the admitting date. The patient may be retained in the hospital under a primary diagnosis other than opiate addiction, provided narcotic drug maintenance is not required.

(2) Physical facilities. Physical facilities shall be adequate to accommodate the number of beds approved for a narcotic drug detoxification service.

(3) Records.

(A) Appropriate records of the use of a narcotic drug for detoxification must be maintained separate from other records in a readily available form and in accordance with the provisions of all state and federal laws.

(B) Except as provided in paragraph (7) and (8) of this subsection, disclosure of patient identifying information maintained by any program is governed by the provisions of the Code of Federal Regulations, Title 42, Part 2, with which every program must comply. Records on the receipt, storage, and distribution of narcotic medication are also subject to inspection under federal and state controlled substances laws. But use or disclosure of verbal or written records identifying patients will, in any case, be limited to actions involving the program or its personnel. In addition to the restrictions upon disclosure in the Code of Federal Regulations, Title 42, Part 2, and in accordance with the authority conferred by the Public Health Service Act, §303(a) (42 United States Code 242(a)), every program is authorized and required to protect the privacy of patients. The hospital shall withhold from all persons not employed by such hospital (or otherwise connected with the conduct of its operations) the names or other identifying characteristics of such patients under any circumstances when hospital personnel have reasonable grounds to believe that such information may be used to conduct any criminal investigation or prosecution of a patient. This section does not authorize withholding information authorized to be furnished under the Code of Federal Regulations, Title 42, Part 2.

(C) A hospital administrator shall permit a duly authorized employee of the SNDTA to have access to all records on the use of narcotic drugs in accordance with the provisions of the Code of Federal Regulations, Title 42, Part 2 and these sections.

(D) The hospital shall maintain accurate records showing dates, quanti-

ty, and batch or code marks of the drug used for detoxification or maintenance treatment. The hospital shall retain the records for at least a period of three years.

(4) Prohibition out-patients. A narcotic drug shall not be administered or dispensed to out-patients of the hospital for opioid detoxification treatment, except as allowed in paragraph (6) of this subsection.

(5) NTP patient admitted–other medical condition. Only NTPs/narcotic treatment programs may undertake maintenance treatment. This does not preclude maintenance treatment of a patient who is hospitalized for treatment of medical conditions other than addiction, who may require temporary narcotic drug maintenance treatment during the critical period of his/her stay and whose enrollment in an NTP/narcotic treatment program has been verified (Reference 21 Code of Federal Regulations 1306.07(c)).

(6) Temporary out-patient treatment–closed NTP. Any hospital which has received approval under subsection (b)(7) of this section, may serve as a temporary out-patient NTP, for up to 30 days, if a local NTP has closed and there is no other facility immediately available in the area to provide narcotic drug maintenance treatment for the patients. When such out-patient service is provided, the hospital administration must notify the SNDTA, FDA, and the DEA within 10 days.

(A) Each patient must be identified in accordance with §229.297(h)(14) (E)(ii) of this title (relating to Operations Standards) and records supplied by the closed clinic and verified by the SNDTA central registry.

(B) All doses administered at the hospital shall be observed doses of an oral narcotic drug in liquid form.

(C) The dose shall be the same or less than the patient had been receiving at the closed NTP unless the patient sees a hospital staff physician who may change the patient's dose.

(D) The hospital personnel may refuse to medicate a patient for any reason.

(E) The hospital shall not admit new patients to this temporary provision of narcotic maintenance service.

(F) No urine specimens or other tests are required. However, the hospital is not prohibited from requiring urine specimens for drug screen of other medical or psychological test as the hospital medical staff may wish to require.

(G) The hospital shall notify the SNDTA central registry when a patient is absent from daily attendance for two days and discharge the patient from treatment. If the patient returns to the hospital he/she may be admitted as an inpatient for detoxification by a member of the hospital medical staff.

(7) Inspection. The hospital shall permit authorized personnel of the FDA, the DEA, and the SNDTA to inspect supplies of the drug at the hospital and evaluate the use of the drug. The FDA and the SNDTA will keep the identity of the patients confidential in accordance with confidentially requirements of the Code of Federal Regulations, Title 42, Part 2.

(8) Sanctions. Failure to abide by the requirements described in this undesignated head may result in revocation of approval to receive shipments of narcotic drugs for narcotic addict treatment, seizure of the drug supply on hand, injunction, and criminal prosecution.

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 June 1, 1989.

TRD-8904905 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Proposed date of adoption: August 5, 1989

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

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# Part II. Texas Department of Mental Health and Mental Retardation

## Chapter 402. Client Assignment and Continuity of Services

## Subchapter B. Continuity of Services-Mental Health

### • 25 TAC §402.44

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes an amendment to §402.44, concerning areas of responsibility. The amendment would require the department and MHAs to include in contracts a requirement for MHAs to comply with procedures for ensuring appropriate alternative placement and aftercare for geriatric mental health clients. The procedures, which would be adopted by reference, differ from existing procedures in the following respects: requirements have been made consistent with the requirements of this subchapter, roles and responsibilities are more clearly delineated, primary responsibility for assessments and aftercare is placed at the local level, a mechanism to create a computerized system to track the placement of geriatric clients is established, the frequency of mandatory aftercare visits is reduced with increased requirements for visits to occur as clinically and administratively appropriate; assessments are qualitative as opposed to requiring data collection only.

Sue Dillard, director, Office of Standards and Quality Assurance, 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.

The anticipated fiscal implication for state government is a one-time additional cost of $88,000 for computerization of placement tracking and for training. There are no fiscal implications for local government or small businesses, although it is acknowledged that mental health authorities may be required to reallocate existing staff resources to utilize the placement tracking system.

Ms. Dillard 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 the assurance of appropriate aftercare for geriatric clients discharged by mental health facilities into alternative placements. 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 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 amendment is proposed under Texas Civil Statutes, Article 5547-202, §2.11, which provide the Texas Board of Mental Health and Mental Retardtion with rulemaking powers.

*§402.44. Areas of Responsibility.*

(a) (No change.)

(b) The department shall have a contract with each MHA which requires that the MHA provide the following:

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

(4) a good faith effort to make available case management services to those clients who qualify according to TDMHMR criteria, with documentation of any exceptions; [and]

(5) a good faith effort to arrange for nonclinical support such as food, clothing, and shelter in cases in which the department's assessment indicates that long-term hospitalization, and chronicity of mental illness, justify such action. This provision will apply only in situations in which no other resources are available. Documentation of the assessment of each client's need for nonclinical support services will be filed in the client record using the form 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; and[.]

(6) adherence to the procedures contained in "Alternative Placement and aftercare for Geriatric Mental

**Health Clients," which is herein adopted by reference as Exhibit B and which is available from the Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.**

(c)-(i) (No change.)

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

Issued in Austin, Texas, on May 25, 1989.

TRD-8904858 Pattilou Dawkins
Chairman
Texas Departmnet of
Mental Health and
Mental Retardation

Earliest possible date of adoption: July 10, 1989

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

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# TITLE 31. NATURAL RESOURCES AND CONSERVATION

## Part I. General Land Office

### Chapter 1. Executive Administration

#### • 31 TAC §1.91

The General Land Office proposes an amendment to §1.91, concerning fees. The amendment is proposed to further the General Land Office's policy of organizing the administrative rules into a more accessible and logical structure This provision is currently included in §153 62(b)(5) of this title, (relating to Initiating the Leasing Process) As proposed, it will be included in the general fee rule

Jim Phillips, general counsel, 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 Phillips 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 increased governmental and administrative efficiency due to reorganization of the administrative rules 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 Jim Phillips, General Counsel, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701

The amendment is proposed under the Texas Natural Resources Code, §31 064, which authorizes the commissioner to set and collect fees for services performed by the General Land Office and the Texas Natural Resources Code, §31 051, which authorizes the commissioner to make and enforce rules consistent with the law.

*§1.91. Fees.* The commissioner is authorized and required to collect the following fees where applicable.

(1)-(13) (No change.)

(14) Miscellaneous services.

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

**(C) Highway right-of-way lease processing fee–$100.**

(D)[(C)] Insufficient check fee (for each check returned)–$15.

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 June 5, 1989.

TRD-8904960 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5009.

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### Chapter 2. Oil, Gas, and Mineral Lease Sales

#### • 31 TAC §2.1, §2.2

*(Edutor'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 General Land Office or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The General Land Office proposes the repeal of §2 1 and §2 2, concerning nomination of tracts of lease and lessee responsibility The General Land Office proposes the repeal of these sections in order to further its policy of reorganizing administrative rules into a more accessible and logical structure The subject matter of these sections will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Leasing)

Jim Phillips, general counsel, has determined that for the first five year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections

Mr Phillips, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased governmental and administrative efficiency due to reorganization of the administrative rules 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 Jim Phillips, General Counsel, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701

The repeals are proposed under the Natural Resources Code, §31.051, which authorizes the commissioner of the General Land Office to make and enforce suitable rules consistent with the law.

*§2.1. Nomination of Tracts for Lease.*

*§2.2. Lessee Responsibility.*

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 June 5, 1989.

TRD-8904959 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5009.

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### Chapter 3. Energy Resources

#### • 31 TAC §§3.1-3.12, 3.14, 3.15, 3.21-3.25, 3.31-3.34, 3. 41-3.43, 3.51, 3.52, 3.61, 3.71

*(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 General Land Office or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The General Land Office proposes the repeal of §§3.1-3.12, 3.14, and 3 15, concerning payment of royalties, filing of reports, failure to pay, penalties and forfeiture, and temporary reduction of gas royalty rates, §§3 21-3.25, concerning records to be filed, commingling of production requests, §§3 31 3 34, concerning rentals, minimum royalties, §§3 41-3 43, concerning prior months' adjustment and credits, §3 51 and §3 52, concerning gas contracts, §3 61, concerning reporting oil and condensate production, and §3 71, concerning reporting gas production The General Land Office proposes the repeal of these sections in order to further its policy of reorganizing administrative rules into a more accessible and logical structure The subject matter of these sections will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Leasing)

Jim Phillips, general counsel, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections

Mr Phillips, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased governmental and administrative efficiency due to reorganization of the administrative rules 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 Jim Phillips, General Counsel, General

Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

The repeals are proposed under the Natural Resources Code, §31.051, which authorizes the commissioner of the General Land Office to make and enforce suitable rules consistent with the law.

*§3.1. Oil and Gas Royalties and Reports.*

*§3.2. Form of Payment.*

*§3.3. Royalty Summary with General Land Office Lease Numbers.*

*§3.4. Royalties Paid by Purchaser or Other Nonlessee.*

*§3.5. Responsibility of Lessee.*

*§3.6. In-Kind Royalties and Reports.*

*§3.7. Shut-In Gas Royalties.*

*§3.8. Compensatory Royalties.*

*§3.9. Sundays and Legal Holidays.*

*§3.10. Basis for Computing Royalties.*

*§3.11. Penalties.*

*§3.12. Forfeiture of Rights.*

*§3.14. Notice of Termination.*

*§3.15. Temporary Reduction of Gas Royalty Rates.*

*§3.21. Assignments and Releases.*

*§3.23. Well Records.*

*§3.24. Other Records.*

*§3.25. Commingling of Production Requests.*

*§3.31. Due Date.*

*§3.32. Payment of Rentals.*

*§3.33. Partial Rental Payments.*

*§3.34 Certification of Sufficient Royalties.*

*§3.41 Prior Months' Adjustment.*

*§3.42. Credits.*

*§3.43. Credits and Refunds Due to Btu Measurement Adjustments.*

*§3.51. Gas Contracts.*

*§3.52. Gas Contract Brief (Form MA-5).*

*§3.61. Reporting Oil and Condensate Production.*

*§3.71. Reporting Gas Production.*

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 June 5, 1989.

TRD-8904958 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5009.

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## Chapter 9. Exploration and Development

## Geophysical Rules and Regulations for Submerged Lands

### • 31 TAC §§9.1-9.12

*(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 General Land Office or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The General Land Office proposes the repeal of §§9.1-9.12, concerning geophysical rules and regulations for submerged lands. The General Land Office proposes the repeal of these sections in order to further its policy of reorganizing administrative rules into a more accessible and logical structure. The subject matter of these sections will be included in new Chapter 9 concerning oil and gas exploration and development.

Jim Phillips, general counsel, has determined that 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.

Mr. Phillips 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 increased governmental and administrative efficiency due to restructuring of the rule system. 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 Jim Phillips, General Counsel, General Land Office, Room 630, 1700 North Congress Avenue, Austin, Texas 78701.

The repeals are proposed under the Natural Resources Code, §31.051, which provide the commissioner with the authority to make and enforce rules consistent with the law.

*§9.1. Definitions.*

*§9.2. Permit Applications.*

*§9.3. Insurance.*

*§9.4. Violations.*

*§9.5. Operations.*

*§9.6. Accommodations.*

*§9.7. Pollution and Restoration.*

*§9.8. Protection of Marine Life.*

*§9.9. Marking Explosives.*

*§9.10. Further Obligations.*

*§9.11. Specific Limitations.*

*§9.12. General Limitations.*

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 June 5, 1989.

TRD-8904961 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5009

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### • 31 TAC §§9.1-9.9

The General Land Office, with the approval of the School Land Board, proposes new §§9.1-9.9, concerning exploration and leasing of oil and gas. The new sections are proposed in order to further the reorganization of the administrative rules into a more accessible and logical structure. The subject matter of these sections was previously contained in Chapter 2, concerning oil, gas, and mineral lease sales, Chapter 3, concerning energy resources, Chapter 9, concerning exploration and development, Chapter 11, concerning legal division, and Chapter 153, relating to Exploration and Development.

Jim Phillips, general counsel, has determined that for the first five-year period the proposed sections are in effect that there will be fiscal implications as a result of enforcing or administering the section. The impact will be due to the increased penalties for improper or un-

timely filing of releases of oil or gas leases under §9.8 of the proposed chapter. However, because the General Land Office cannot determine the number of releases that will be improperly or untimely filed, it is impossible at this time to determine the fiscal impact of these sections. There will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr Phillips also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be increased governmental and administrative efficiency due to reorganization of the administrative rules 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 Jim Phillips, General Counsel, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

The new sections are proposed under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Commissioner–Commissioner of the General Land Office.

Counterparts–Instruments executed by different parties and recorded as separate instruments or fully executed instruments recorded in different counties.

Exploration–Geological, geophysical, geochemical, and other surveys and investigations conducted for the purposes of discovering and locating oil and gas.

GLO–General Land Office.

GLO lease number–The identification assigned by the GLO to each lease filed in the GLO mineral files, usually the same as the mineral file number, but sometimes different, as with undivided interest leases.

Land trade lands–Lands, the surface of which have been sold or traded, with mineral and leasing rights retained by the state.

Lessee–The initial holder of the leasehold interest or a successor, assignee, devisee, heir, or any other person who acquires that interest.

Mineral file number–The identification assigned by the GLO to the GLO jacket in which lease records are kept.

Oil and gas–Crude oil, natural gas, and associated hydrocarbons, including, without limitation, casinghead gas, condensate, distillate, and liquids extracted from natural gas.

Operator–The person primarily responsible for exploring for, developing, or producing oil and gas from a particular lease, field, or area, also any employee, agent, servant, contractor, subcontractor, trustee, or receiver of an operator, or any other agent in control of any or all of the leasehold interest.

Person–Any individual, partnership, corporation, association, or other legal entity.

Premises–Any state property subject to a lease.

PSF–Permanent school fund.

PUF–Public university fund.

Relinquishment Act lands–Any public free school or asylum lands, whether surveyed or unsurveyed, sold with a mineral classification or reservation between September 1, 1895 and August 21, 1931, encompassing any other lands, including vacancy lands, patented with all minerals reserved to the state and expressly made subject to the leasing terms and procedures governing Relinquishment Act lands.

Relinquishment Act leases–Leases issued under the Texas Natural Resources Code, Chapter 52, Subchapter F and §9.5(4) of this title (relating to Leasing State Property for Oil and Gas).

RRC–Texas Railroad Commission.

SLB–School Land Board.

Submerged lands–Islands, salt water lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of the State of Texas.

TDC–Texas Department of Corrections.

TPWD–Texas Parks and Wildlife Department.

*§9.2. Leasing Guide.* For exploration and development of minerals other than oil and gas, see Chapter 10 of this title (relating to Exploration and Development of State Minerals Other than Oil and Gas). Oil and gas underlying state lands are leased in the following ways, depending on the type of land.

(1) PSF fee lands: uplands, submerged lands, and state-owned riverbeds and channels are leased by the SLB under sealed bid procedures. See the Texas Natural Resources Code, Chapter 52, Subchapters B and C, §9.5 of this title (relating to Leasing of State Property for Oil and Gas), and Chapter 153 of this title (relating to Exploration and Development).

(2) Relinquishment Act lands: leases are negotiated by surface owners as agents for the state See the Texas Natural Resources Code, Chapter 52, Subchapter F, and §9.5 of this title (relating to Leasing of State Property for Oil and Gas) Note: Relinquishment Act lands owned by a state agency, including highway rights-of-way, are leased under paragraph (1) of this section. See the Texas Natural Resources Code, §32.002(c), §34.002(b) and Chapter 52, Subchapter B.

(3) Land trade lands: leases are issued by the SLB under sealed bid procedures. See the Texas Natural Resources Code, §51.054(a), Chapter 52, Subchapter B, §9.5 of this title (relating to Leasing of State Property for Oil and Gas), and Chapter 153 of this title (relating to Exploration and Development).

(4) State agency lands, except TPWD lands, TDC lands, and Relinquishment Act lands owned by state agencies: leases are issued by the SLB under sealed bid procedures. See the Texas Natural Resources Code, Chapter 32, Subchapters D and E, and Chapter 153, of this title (relating to Exploration and Development).

(5) Texas Highway Department rights-of-way, except those subject to the Relinquishment Act: leases are issued through a preferential leasing system administered by the SLB. See the Texas Natural Resources Code, Chapter 32, Subchapter F, and §9.5 of this title (relating to Leasing of State Property for Oil and Gas).

(6) TDC and TPWD lands, except for Relinquishment Act lands: leases are issued by the appropriate board for lease through sealed bid procedures. See the Texas Natural Resources Code, Chapter 34, and Chapter 201 of this title (relating to General Rules).

(7) PUF lands: leases are issued by sealed bid or public auction as decided by the Board for Lease of University Lands. See Texas Education Code, Chapter 66, Subchapter D, and Chapter 403 of this title (relating to Sale of Oil and Gas Leases).

(8) Free royalty lands: leases are executed by the executive right holders as the state,s agents. See the Texas Natural Resources Code, §51.054 and §9.5 of this title (relating to Leasing of State Property for Oil and Gas).

*§9.3. General Provisions.*

(a) Scope of this chapter. This chapter shall apply to all lands specified in §9.2 of this title (relating to Leasing Guide) except for those lands covered by paragraphs (6), (7), and (8) of that section.

(b) Conflict between this chapter and other rules and statutes. Operations on state lands are subject to all applicable state and federal regulatory authorities. It is not the intent of this chapter to usurp the regulatory powers of such authorities. If the provisions of this chapter conflict with and cannot be harmonized with applicable state or federal statutes, federal rules, or state rules (e.g., the rules of RRC, Texas Water Commission, or Air Control Board), such other regulatory statutes or rules shall control

(c) Conflict between this chapter and lease provisions. This chapter has been drafted based upon the GLO lease forms in use as of June 1989. To the extent the provisions of this chapter conflict with lease provisions, including those found in older lease forms, the lease provisions will control.

(d) Failure to comply with this chapter. If a lessee or operator fails to comply with this chapter, the state may seek any remedies authorized by statute or common law, including forfeiting the lease under §9.8 of this title (relating to Discontinuing the Leasehold Relationship). A lessee is responsible for the actions or omissions of its operator and the lessee's employees, agents, servants, contractors, subcontractors, and any other agent in control of any or all of the leasehold interest.

(e) Exceptions to this chapter. The commissioner may, if authorized by law and upon proper written request, grant exceptions to the provisions of this chapter if the commissioner deems the exceptions to be in the best interest of the state. No such exception shall be effective until a written request by the lessee and a written explanation, signed by the commissioner, is placed in the appropriate mineral file or other GLO file.

(f) Compliance with lease terms. Lessee shall comply with the provisions of the lease. Nothing in this chapter shall be construed as relieving a lessee of this duty or as impairing any remedies available to the state.

*§9.4. Geophysical and Geochemical Exploration Permits.*

(a) General rule of application. The rules in this section shall apply to lands described in §9.2(1)-(4) of this title (relating to Leasing Guide).

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

(1) Applicant–A person seeking authorization from the GLO to conduct geophysical or geochemical exploration on state-owned lands.

(2) Client–One for whom the geophysical or geochemical exploration is to be conducted.

(3) Coastal wetlands–Emergent, periodically emergent, or submerged coastal areas of high biologic productivity where sea water is typically present during normal weather conditions.

(4) Contractor–One who directs, supervises, controls and/or performs the exploration operations, together with all employees and sub-contractors.

(5) Geochemical exploration–A survey or investigation conducted to discover or locate oil and gas prospects using techniques involving soil sampling and analysis.

(6) Geophysical exploration–A survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electric techniques.

(7) High velocity energy source–Energy sources which generate a sharp-peaked energy pulse including, but not limited to, dynamite, detonating cord, seismogel, and ammonium nitrate,

(8) Low velocity energy source–Energy sources which generate a bell shaped energy pulse including, but not limited to, pneumatic, acoustic, and vibrating device.

(10) Permit–License issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(11) Permittee–The holder of a permit.

(12) Public beaches–Any shoreline frequently utilized by the general public for recreational activities.

(13) Resource management codes–Abbreviations for environmental restrictions adopted by state and federal resource agencies and applicable to state-owned tracts.

(14) Shot–Any action resulting in the generation of an energy pulse from which geophysical data is obtained.

(15) Shrimping fleet–A group of 10 or more boats trawling for shrimp in an area not more than one mile in diameter.

(16) Structure–Any man-made improvement placed on or affixed to state-owned lands.

(c) Permit applications and procedures.

(1) Geophysical or geochemical exploration for mineral resources may not be conducted on state-owned lands without a permit issued by the commissioner.

(2) Permits shall be issued jointly to, and are the mutual responsibility of, the client and the contractor.

(3) Application for a permit shall be made by the contractor. The application shall be made upon forms furnished by the GLO, and shall include:

(A) the names, addresses, phone numbers, and taxpayer I.D. numbers of the client and the contractor. If an applicant is a corporation, it shall include the names of the corporate representatives authorized to execute legal documents and shall submit written evidence confirming that it is not delinquent in payment of franchise taxes;

(B) maps showing the location of shot lines in relation to state lease tracts, including x and y coordinates of the beginning and end points of each line as designated by the Texas Coordinate System, he Texas Natural Resources Code, §21.071 (for submerged lands only);

(C) any resource management code information available regarding the tracts on which the exploration activity will be conducted; and

(D) a complete description of the number, types, and spacing of shots for the energy source to be expended during exploration activities.

(4) Applications must be received by the GLO at least 14 working days before proposed commencement of operations. The application processing period may extend beyond 14 days. Operations, including surveying of the area, shall not begin until contractor receives approval by GLO and is assigned a permit number.

(5) The application shall be accompanied by the following fees as specified in §1.91 of this title (relating to Fees):

(A) application filing fee;

(B) geophysical fee (applicable to submerged lands only);

(C) geochemical fee;

(D) exploration inspection fee (applicable to submerged lands only);

(E) surface damage fee; and/or

(F) bottom damage fee (applicable to submerged lands inside the barrier reef of the Gulf of Mexico only).

(6) Permits are issued subject to any existing lease or rights granted to a surface lessee on tracts to be explored.

(7) Prior to the issuance of a permit, applicant may be required to submit additional information.

(d) Insurance. Prior to the issuance of a permit, applicant shall file with the GLO proof of current liability insurance from a company approved by the Texas Board of Insurance. The extent of the insurance coverage shall be in the amount deemed sufficient by the GLO.

(e) Geophysical or geochemical operational guidelines.

(1) The following provisions shall apply to all geophysical or geochemical operations conducted on state-owned lands.

(A) Permits shall be granted for a minimum of three days and a maximum of 30 days. A permit may be extended for a maximum of an additional 30 days at the discretion of the commissioner and upon payment of the applicable fees.

(B) Failure to comply with any conditions included in the permit which pertain to the GLO or any other state or federal regulatory agency shall be considered a violation as specified in subsection (h) of this section.

(C) The client or contractor shall give verbal notice to the GLO prior to commencement of operations. The GLO will assign a number to the permit and give written notice of its issuance to all permittees.

(D) Geophysical crews operating on state-owned lands shall maintain and make the following available for inspection by the commissioner or a designated representative, upon request:

(i) the authorized permit number and a copy of any conditions included in the permit;

(ii) a copy of the GLO rules governing geophysical and geochemical exploration;

(iii) detailed maps showing the approved shot lines and shot points covered by the permit; and/or

(iv) a copy of the resource management codes and definitions as provided by the GLO for those tracts on which operations will be conducted (applicable to submerged lands only).

(E) No shot in excess of 20 pounds dynamite equivalent may be used without special permission of the commissioner. Applicants wishing to utilize more than 20 pounds dynamite equivalent shall submit written documentation to the commissioner explaining the necessity for the size shot proposed, the number of shots to be utilized, the location of all shot holes, the proposed date that operations will commence, and the expected operations period. After evaluation, the request will be approved or denied, at the commissioner's discretion.

(F) No shots shall be discharged other than in daylight hours except by written permission of the commissioner.

(G) No shots shall be detonated within three miles of a public beach between May 1st and September 10th.

(H) Shot holes shall be at least 120 feet deep unless otherwise provided.

(I) All operations shall be conducted using the highest degree of care to prevent damage to or pollution of all lands and waters. Any physical modification of the surface including, but not limited to, mounding, cratering, or vehicle tracks shall be remedied upon completion of the work and the area returned to its original condition as nearly as possible. Such surface restoration shall be coordinated with and approved by the GLO.

(J) Persons using wheeled or tracked vehicles on state-owned lands shall use reasonable efforts to follow existing tracks or roadways to minimize impact to the area.

(K) Prior to conducting any operations, permittees shall coordinate with the appropriate state and federal fish and game agencies regarding any operations which could potentially impact protected species.

(L) No geophysical surveying or shooting shall be performed within 1,000 feet of a known bird rookery island, as depicted on maps maintained by the GLO, between February 15th and September 1st.

(M) Any person conducting geophysical or geochemical activities under this section must immediately advise the commissioner of the following which presently exist or can reasonably be anticipated:

(i) the location and type of any dangerous condition which may constitute an imminent threat to human activity; or

(ii) activities or situations, whether caused by permittee's activities or otherwise, which may adversely affect the environment, aquatic life or wildlife, cultural resources, or other uses of the area in which the exploration activity is conducted.

(N) No vessel, vehicle, or equipment operating under permit shall discharge solid waste or garbage into state waters or state-owned lands. Solid waste includes, but is not limited to, non-biodegradable containers, rubbish, or refuse. A sign, with letters no smaller than one inch in height, shall be displayed in a high traffic area of any vessel or equipment operating in state waters under permit, stating, "Discharge of any solid waste or garbage into state waters is strictly prohibited and may result in revocation of the state permit authorizing exploration operations."

(O) Any pollution, fish or wildlife kill, or loss of property shall be immediately reported to the commissioner.

(2) In addition to the provisions of subsection (e)(1) of this section, the following provisions shall apply to geophysical operations conducted on submerged lands.

(A) Each person applying to perform geophysical exploration on state-owned lands shall file with the GLO a unique symbol, number, or series of characters which will be used to identify all equipment and materials used in geophysical and/or geochemical exploration.

(B) All equipment used in connection with geophysical survey work which is placed on submerged lands shall be:

(i) distinctly marked with permittee's unique symbol, number, or series of characters clearly identifying the company performing the geophysical operations;

(ii) in compliance with rules governing size, design, and marking, as promulgated by the Untied States Coast Guard and the United States Army Corps of Engineers;

(iii) anchored in such a way as to minimize potential damage to commercial fishing operations;

(iv) properly flagged during daylight hours and properly lighted when remaining in position after sundown; and

(v) removed immediately upon completion of geophysical work.

(C) Staging and work areas shall not be established in vegetated coastal wetlands or vegetated dune areas.

(D) No shot shall be detonated within one mile of a shrimping fleet operating in the area.

(E) Suspended high velocity energy sources shall not be used without express written authorization from the commissioner. Requests for the use of such explosives shall be in writing, giving the size of charges to be used, the depth at which they are to be detonated, and the specific precautionary methods proposed for the protection of fish, oysters, shrimp, other aquatic life, wildlife, or other natural resources. After evaluation, the request will be approved or denied, at the commissioner's discretion.

(F) An boats may be required, at the discretion of the GLO, for operations in waters less than three feet deep as measured from mean low water.

(G) No shot shall be discharged within 1,000 feet of any boat not involved in the permitted operations.

(H) No shot shall be discharged within 500 feet of any oyster reef, marked oyster lease, or marked red snapper reef, as designated on maps maintained by the TPWD, or within 500 feet of any dredged channel, dock, pier, causeway, or other structure.

(I) Buried shots shall not be left overnight in water less than four feet deep as measured at low tide, or within 1,500 feet of any shoreline unless the shots are properly buried and anchored, all wires are properly shunted to prevent accidental discharge, and all shot holes are properly marked and lighted.

(J) No shot in excess of 20 pounds shall be discharged within one mile of any pass, jetty, mouth of a river, or other entrance to the Gulf of Mexico from inland waters.

(3) In addition to the provisions of subsection (e)(1) of this section, the following provisions shall apply to geophysical operations conducted on state-owned uplands.

(A) A surface lessee shall be notified prior to any entry by contractor or client onto permitted land, and shall be notified upon contractor's or client's leaving the area.

(B) No shot shall be discharged within 1,000 feet of any livestock located on state-owned lands.

(C) Neither client nor contractor may negotiate with the surface lessee regarding the payment of surface damages. The client or the contractor shall be liable to the state for any damages caused by geophysical or geochemical explorations.

(D) Fences shall not be damaged or permanently removed. Any fence which is disturbed to permit passage shall be replaced and restored to its preexisting condition. All gates shall remain closed and locked when not in use.

(E) Contractor is not permitted the use of water from stock tanks located on the tract, except in case of emergencies.

(F) In order to prevent erosion, contractor shall construct terraces as directed by GLO and shall not remove top soil when blading the surface.

(f) Inspection. All operations shall be subject to inspection by the commissioner or the commissioner's representatives at any time. Upon reasonable notice, the permittee shall furnish the commissioner or the commissioner's representatives with transportation over submerged lands from the normal staging site to and from the operations site, along with any meals and living quarters necessary while the inspection is being conducted. If the TPWD assigns a representative to the exploration party, the representative shall be furnished with similar accommodations.

(g) Reporting after expiration of permit. Within 30 days of the expiration date of the permit, the permittee shall file with the commissioner a sworn summary of activities report, prescribed by the GLO, which:

(1) identifies each tract worked each day during which exploration operations were conducted, including surveying of area;

(2) provides maps showing any deviation in shot line or shot point location from the maps which were submitted with the permit application; and

(3) if high-velocity energy sources are used, shall include a sworn inventory of all explosives which are loaded, used, returned, or lost during execution of the permit. This inventory shall be on the inventory of explosives form prescribed by the GLO.

(h) Violations.

(1) A permittee that violates or fails to comply with any provision of the Texas Natural Resources Code or this chapter, is subject to immediate revocation of the permit and may be prohibited from further exploration on state-owned lands, except upon such additional terms, conditions, and safeguards as the commissioner may expressly stipulate. A permittee who commits such violation will be liable for any costs incurred from any damage resulting from the violation.

(2) Upon discovery of any violations, the commissioner or a designated representative may order temporary discontinuance of seismic operations until completely reviewed by the commissioner.

(i) Other records. At any time or from time to time the GLO may require any additional records relating to any aspect of exploration operations and accounting.

(j) General limitations. These rules shall not be construed to enlarge or restrict the rights of any owner of a state mineral lease.

*§9.5. Leasing State Property for Oil and Gas.* State property will be leased for the exploration and development of oil and gas under these procedures.

(1) Sealed bid leasing by the SLB.

(A) Lands affected. See §9.2 of this title (relating to Leasing Guide) to determine which lands are leased by sealed bid. Generally, this includes all lands owned in fee by the PSF, all land trade lands, and state agency lands, except TPWD or TDC lands.

(B) Nominations, advertising, and awarding leases.

(i) The SLB or persons interested in leasing a specific tract may nominate a tract for lease. The tracts will be evaluated by GLO geologists. The SLB will set the terms and conditions upon which tracts will be offered for lease. These terms will be advertised and bids taken. Although any or all bids may be rejected, generally, the highest bidder for the tract will be issued a lease. See Chapter 153, of this title (relating to Exploration and Development) for more details on the leasing procedure.

(ii) The GLO will notify the surface owner of land trade lands of the tract's nomination and of any lease awarded if such notification has been requested.

(iii) Riverbeds and channels which are located more than two miles from a well that is producing, or capable of producing, oil or gas shall be leased pursuant to the special leasing provisions of the Texas Natural Resources Code, §52.086.

(2) Leasing of Relinquishment Act lands by surface owners.

(A) Lands affected. The leasing procedures as set out in this paragraph apply only to the leasing of Relinquishment Act lands.

(B) Identity of the state's agent. The surface owner of Relinquishment Act land acts as the state's leasing agent. A minor or a person of unsound mind, as these terms are defined in the Texas Probate Code, cannot act as the state's agent. An agent of the surface owner, including an attorney-in-fact, cannot execute a Relinquishment Act lease. However, if the surface owner is a corporation, a Relinquishment Act lease may be executed by any duly authorized officer or agent of the corporation.

(C) Authority and duties of agent.

(i) Authority. The surface owner shall execute oil and gas leases on behalf of the state, unless a surface owner's agency rights have been forfeited. The surface owner may not enter into a contract to execute a Relinquishment Act lease.

(ii) Prohibition against self-dealing. A surface owner may not self-lease, either directly or indirectly. A surface owner may not acquire by assignment a

lease executed by that surface owner. A surface owner will be considered to have engaged in self dealing if the surface owner leases or assigns a lease executed by that surface owner to the following persons:

(I) a nominee;

(II) any corporation or subsidiary in which the surface owner is a principal stockholder or an employee of such a corporation or subsidiary;

(III) a partnership in which the surface owner is a partner or an employee of such a partnership;

(IV) if the surface owner is a corporation or a partnership, a principal stockholder of the corporation or a partner of the partnership, or any employee of the corporation or partnership;

(V) a fiduciary representing the surface owner, including, but not limited to, a guardian, trustee, executor, administrator, receiver, or conservator; or

(VI) a family member or anyone related to the surface owner by marriage, blood, or adoption.

(iii) Fiduciary duty of agent. As the state's agent, a surface owner owes the state a fiduciary duty and the duty of utmost good faith. A surface owner must fully disclose any facts affecting the state's interest and must act in the best interest of the state. Any conflict of interest must be resolved by putting the interests of the state before the interests of the surface owner. In addition to these duties, the surface owner owes the state all the common-law duties of a holder of executive rights.

(iv) Consequences of a breach of the surface owner's fiduciary duty or a violation of the prohibition against self-dealing. When a surface owner engages in self-dealing by acquiring an assignment in a lease executed by that surface owner, such lease is void as of the time of assignment and the commissioner may forfeit the surface owner's agency rights. When a surface owner breaches any duty or obligation owed to the state, the commissioner may request that the attorney general file suit. A suit to enforce the surface owner's duties and obligations or to forfeit the surface owner's agency rights shall be filed in a district court in Travis County. See the Texas Natural Resources Code §52.188 and §52.189.

(v) Penalty assessment for breach of the surface owner's fiduciary duty. A penalty of 10% shall be imposed on any sums due the state because a surface owner breaches a fiduciary duty. The imposition of this penalty does not limit the right of the state to obtain punitive damages, exemplary damages, or interest. Any punitive damages or exemplary damages assessed by a court shall be offset by the 10% penalty imposed by this paragraph.

(D) Lease negotiation procedure.

(i) Subject to the limitations against self-dealing, the surface owner is authorized to act as the state's leasing agent with any person desiring to develop or explore for the oil and gas.

(ii) The lease shall be on the GLO lease form in use on the date of execution. This form will be prepared and furnished by the GLO.

(iii) All of the negotiated terms must be included in the lease instrument. No lease term or provision may be included in a collateral contract or agreement.

(iv) The proposed lease shall be submitted to the GLO for approval prior to recording the lease in the county records. The proposed lease shall be accompanied by the processing fee required by §1.91 of this title (relating to Fees).

(E) Approval and filing of lease.

(i) Any additions, modifications, deletions or changes to the GLO lease form shall be subject to the commissioner's approval.

(ii) The commissioner may reject, or refuse for filing, any lease deemed contrary to the best interests of the state.

(iii) Unless the commissioner makes an exception under §9.3 of this title (relating to General Provisions), a Relinquishment Act lease may not provide for a primary term of more than five years.

(iv) Unless the commissioner makes an exception under §9.3 of this title (relating to General Provisions), a Relinquishment Act lease may not encompass more than four full sections, or 2,560 acres. A "mother hubbard" or "coverall" clause in the lease is not acceptable.

(v) Private land and Relinquishment Act land may not be included in the same lease.

(vi) A lease may encompass several smaller tracts if they are contiguous or within 1/2 mile of each other.

(vii) A Relinquishment Act lease may not provide for a royalty of less than 1/16th to the state or a delay rental of less than $.10 per acre.

(viii) When a proposed lease covering an undivided interest in Relinquishment Act land is submitted for approval, the surface owner submitting the lease shall inform the GLO of all remaining undivided interest owners of that land.

(ix) The state and the surface owner must share equally in all consideration paid under the lease. However, the surface owner may waive or defer his or her share of the bonus. The adequacy of the consideration shall be determined by the commissioner at the time a certified copy of the lease is offered for filing in the GLO.

(x) If the commissioner rejects a proposed lease, the prospective lessee will be notified of the reasons for the rejection and any changes, deletions, or additions which would render the lease acceptable. The prospective lessee may request reconsideration of a rejection.

(xi) Upon receipt of approval, the lease shall be recorded in each county in which the land is located. A certified copy of the lease, from each county in which it is recorded, shall be filed with the GLO. Leases are not effective until approved and filed in the GLO. Such filing and approval of leases shall not limit, waive, or affect any lawful claim or remedy available to the state.

(xii) The state's share of the bonus payment and the filing fee prescribed by §1.91 of this title (relating to Fees) shall be submitted along with the certified copy or copies of the lease. A lease is void unless it recites the actual consideration paid or promised for the lease.

(F) Leasing procedure when surface owner cannot be located. If a potential lessee cannot locate a surface owner, the procedures set out in the Texas Natural Resources Code §52.186 shall be followed. The land will then be leased by sealed bid as provided in paragraph (1) of this section. The state will receive all the consideration paid under such a lease.

(G) Leasing procedure when surface owner's agency rights are forfeited.

(i) When a surface owner's agency rights have been forfeited, the land shall be subject to lease by sealed bid as provided in paragraph (1) of this section. The surface owner shall not be entitled to share in the proceeds of such lease. Upon expiration or termination of such lease, the surface owner's agency rights will be ipso facto reinstated.

(ii) If no lease is executed within one year of forfeiture, the surface owner's agency rights may be reinstated at the commissioner's discretion.

(3) Leasing the state's free royalty interests.

(A) Lands affected. These leasing procedures apply to lands sold pursuant to the Texas Natural Resources Code, §51.054, or any lands sold with a free royalty interest reserved to the state.

(B) Leasing by executive right holder on behalf of the state. The holder of the executive or leasing rights on free royalty land shall act as the state's agent in executing oil and gas leases covering the state's free royalty interest. In executing this lease, the executive right holder owes the state a duty of good faith and any other common-law duties which an executive right holder owes to a non-executive mineral interest owner.

(C) Leases covering the state's free royalty interest are not effective until filed with the GLO.

(4) Leasing of highway rights-of-way by the SLB.

(A) Definitions. As used in this paragraph, the terms "adjacent mineral owner" and "tract" have the following meanings unless the context clearly indicates otherwise.

(i) A person is considered an adjacent mineral owner:

(I) if the adjoining land is unleased, the term refers to the holder of the mineral estate in that land;

(II) if the adjoining land is leased, the term refers to all working interest holders of that lease;

(III) if the adjoining land is leased but undivided mineral interests remain unleased, the term refers to those undivided mineral interest holders as well as the lease's working interest holders.

(ii) Tract means a highway right-of-way subject to lease under this paragraph.

(B) Lands affected.

(i) A tract may be leased if the state owns the minerals under it and if the tract is not within 2,500 feet of a well which was capable of producing oil or gas in paying quantities as of January 1, 1985. If such a well was in existence as of that date, the tract may not be leased.

(ii) In its discretion, the SLB may establish the size and the outer boundaries of each tract to be leased; however, each tract shall extend across the entire width of the right-of-way.

(iii) The SLB may refuse to lease a particular tract, either on its own or upon the request of the Highway Department.

(iv) Tracts subject to the Relinquishment Act shall be leased by sealed bid under paragraph (1) of this section.

(C) Preliminary leasing procedures.

(i) The SLB may initiate the leasing of tracts by providing notice to adjacent mineral owners in accordance with paragraph (4)(C)(iv) of this section.

(ii) An application to lease a tract must contain the following:

(I) a written description of the tract sufficient for it to be located on the ground and a map showing the tract's boundaries and dimensions;

(II) the names and addresses of all adjacent mineral owners, as reflected in the tax assessor-collector's records and county clerk's records in the county where the tract is located;

(III) an affidavit stating that there was no well capable of producing oil or gas in paying quantities within 2,500 feet of the tract as of January 1, 1985; and

(IV) the processing fee required by §1.91 of this title (relating to Fees).

(iii) A person who holds a lease on lands adjacent to a tract, and who applies to lease that tract must also submit the following:

(I) a written waiver of the notice to which the applicant as an adjacent mineral owner is entitled;

(II) a certified copy or a reproduction of a certified copy of the recorded lease on the land adjacent to the tract. If the lease has not been recorded, an applicant must submit a copy of the lease along with an affidavit stating that it is a true and correct copy of the lease on the adjacent land; and

(III) a notarized affidavit stating the consideration paid for the lease on the adjacent land.

(iv) The GLO shall notify each adjacent mineral owner, by registered mail, of the proposed leasing of the tract. An adjacent mineral owner may waive this notice by providing a written waiver to the GLO. If the person who initiates the leasing process cannot determine the identity or address of an adjacent mineral owner from the county records, notice shall be by publication as provided in the Texas Natural Resources Code §32.201(d).

(D) Preferential leasing right of adjacent mineral owners.

(i) General rule. Each adjacent mineral owner is entitled to lease to the center of the tract in the same proportion as his or her ownership in the adjoining land.

(ii) Examples.

(I) If the adjacent mineral owners on opposite sides of a tract differ, each is entitled to preferentially lease to the center of the tract, thereby leasing one half of the tract.

(II) If the adjacent mineral owner on both sides of a tract is the same person, he or she may lease the entire tract.

(III) When the mineral ownership of leased or unleased land adjoining one side of a tract is owned in cotenancy among several adjacent mineral owners, each shall have a preferential right to lease to the center of the tract in proportion to his or her interest in the adjoining land.

(iii) Lease terms. Each lease issued on a tract shall grant the lessee the authority to pool the acreage in accordance with the Texas Natural Resources Code, §32.202. A certified copy of the unit designation or the pooling agreement must be filed with the GLO. Each lease shall also provide for the payment of compensatory royalty in accordance with the Texas Natural Resources Code, §32.203. The additional terms of a lease depend on whether lands adjacent to the tract are leased. If the adjacent land is unleased, the SLB shall set the terms of the lease. If the adjacent land is leased, the tract shall be leased upon terms at least as favorable as those of the most favorable lease held on the adjoining land.

(iv) Lease approval and payments. A lease will not be issued until the SLB approves the lease and receives the bonus payment and the 1.5% sales fee provided by the Texas Natural Resources Code, §32.110. If the adjacent mineral owner does not tender such sums within 120 days of receipt of notice under paragraph (4)(C)(iv) of this section, the preferential right to lease is forfeited.

(v) Waiver. Any adjacent mineral owner may waive the preferential right to lease by filing with the GLO a written waiver executed and acknowledged by the mineral owner or his duly authorized agent.

(E) Leasing after forfeiture or waiver of preferential leasing right.

(i) Generally. Within 18 months of the forfeiture or waiver of the preferential right, the SLB may lease the tract directly to an applicant or to the highest bidder under a sealed bid sale.

(ii) Lease to applicant.

(I) If the adjoining land on one side of the tract is owned by several adjacent mineral owners in cotenancy, and one or more of these adjacent mineral owners forfeits or waives his or her preferential right, the SLB shall lease in equitable proportions to the remaining cotenants who have applied to lease the tract.

(II) If the adjacent mineral owners on one side of a tract waive or forfeit their preferential rights to lease, the SLB shall lease in equitable proportions to the adjacent mineral owners on the other side of the tract who have applied to lease such tract.

(III) If all or part of a tract is not leased to an adjacent mineral owner, the SLB shall lease all or part of the tract to the first person who submitted an application to lease the tract.

(IV) The terms and conditions of a lease issued under this subparagraph will be the same as those found in leases issued to adjacent mineral owners. The SLB shall not lease to an applicant at a price or terms which are less than those offered to the adjacent mineral owner.

(V) A lease will not be issued until the SLB approves the lease and receives the bonus payment and the 1.5% sales fee provided by the Texas Natural Resources Code, §32.110.

(iii) Lease by sealed bid. If all or part of the tract is not leased to an adjacent mineral owner or to an applicant, the SLB shall offer all or part of the tract for lease by sealed bid under paragraph (1) of this section.

(5) Sealed bid leasing by the TPWD and TDC boards for lease.

(A) Lands affected. See §9.2 of this title (relating to Leasing Guide) to determine which lands are subject to lease by sealed bid. Generally, all lands whose minerals are owned by or held in trust for TDC or TPWD will be leased for oil and gas by their respective boards for lease.

(B) Nominations, advertising and awarding leases. A board for lease or a person interested in leasing a specific tract may nominate a tract for lease. The board for lease may add special lease terms and conditions, but they are generally the same as those contained in SLB sealed bid leases. The terms and conditions are advertised and bids accepted. Although the board for lease can reject any or all bids, the highest bidder generally will be issued a lease. See Chapter 201 of this title (relating to General Rules) for more details on the leasing procedure.

*§9.6. Maintaining the Lease.*

(a) General rule of application. This section shall apply to leases covering lands described in §9.2(1)-(6) of this title (relating to Leasing Guide), except to the extent this section conflicts with the specific provisions of such leases.

(b) Delay rentals and production.

(1) Automatic termination. The lease shall terminate automatically unless drilling operations or production of oil or gas in paying quantities, as defined in this section, has commenced on or before the anniversary date of the lease in any year during the primary term, or unless, on or before that date, the lessee pays and the GLO actually receives the amount stipulated in the lease as a delay rental.

(A) Anything less than actual receipt of the delay rental payment in the GLO shall be inadequate and improper and shall result in automatic termination of the lease.

(B) When delay rentals are timely paid and received, lessee shall retain the rights granted under the lease and may postpone the commencement of drilling operations or production of oil or gas for a period of one year from the anniversary date.

(C) The commencement of drilling operations, the production of oil or gas in paying quantities, and the delivery to the GLO of the delay rental are at the option of lessee. Lessee shall not be obligated to perform any of these activities and no liability shall accrue to lessee for failure to produce, drill, or pay the rental. The commencement of drilling operations, the production of oil or gas in paying quantities, or the payment of delay rentals are conditions to maintain the lease in effect.

(2) Timely payment. The date stamped, punched, or otherwise reflected on the delay rental payment, check, draft, stub, or envelope by the GLO shall be presumed to be conclusive of the date of actual receipt by the GLO.

(A) Payment of a delay rental shall be considered timely, irrespective of the date of actual receipt, if lessee establishes that:

(i) payment was dispatched to the GLO's correct address by certified or registered mail;

(ii) an acceptance form was initialed by an employee of the United States Post Office, a common carrier or its equivalent and the date stamped by the United States Post Office, a common carrier or its equivalent (not including private postal meters) showing the letter was received and accepted at least 14 days before the anniversary date of the lease; and

(iii) payment is actually received by the GLO no later than 20 days after the anniversary date of the lease.

(B) Subparagraph (A) of this paragraph shall not apply if:

(i) an oil and gas lease has been issued on the same property by the state to another lessee prior to receipt of notice by the GLO from lessee contending that subparagraph (A) of this paragraph would apply; or

(ii) the oil and gas interests of the state have been patented, deeded or otherwise conveyed or disposed of and, as a result, are unavailable for lease by the state.

(C) In the event the due date of a delay rental should fall on an official state or federal holiday or weekend (Saturday or Sunday), the due date shall be extended to the next day the GLO is open to conduct official business.

(3) Undivided interests. The failure of any interest owner to pay such owner's share of the rental will result in termination of the entire lease, not just in the termination of the interest of the party failing to pay such portion of the rental.

(4) Rental indivisible. The delay rental is indivisible and may not be reduced for any reason.

(5) Effect of improper payment. Neither receipt nor retention by the GLO of an improperly paid delay rental shall operate as a ratification or a re-grant of the interest covered by a lease that has terminated, nor shall such receipt or retention estop the state from asserting the termination of the lease.

(6) Production. If production in paying quantities is secured from the land covered by the lease and the payment of royalty begins and continues to be paid, lessee shall be exempt from the payment of further delay rentals so long as such production and payment of royalty continue through the primary term.

(c) Dry holes, cessation of production, and drilling or rework operations.

(1) Dry holes.

(A) Effect on rentals. Delay rentals shall not be required to maintain any lease on which actual drilling operations were commenced prior to the anniversary date of the lease during the primary term where such operations are diligently prose-

cuted across such anniversary date to the completion of a well as a dry hole, a producing well, or a shut-in well capable of producing in paying quantities.

(B) Effect on term. If a well is completed during the primary term as a dry hole, or as a shut-in well, the lease shall be perpetuated until the next rental paying date following the expiration of 60 days from the completion of such well. Delay rentals may be paid thereafter as set out under subsection (b) of this section to perpetuate the lease.

(C) Completion of dry hole. A completed well not capable of producing in paying quantities shall be considered a dry hole.

(D) Last year of primary term. If lessee completes a well at any time during the last year of the primary term, or within 60 days prior thereto, the lease will be perpetuated to the end of the primary term without the necessity of further operations or payment of delay rental.

(E) Effect on extensions. If lessee completes a well as a dry hole on a lease which has been extended under subsection (d) of this section, the lease shall not terminate if, within 60 days of such completion, lessee commences additional drilling or reworking operations in good faith and with reasonable diligence with no cessation of operations for more than a total of 60 days.

(F) Effect on operations. If lessee completes a well within the last 60 days of the primary term on a nonproducing lease, the rights of lessee shall continue without the necessity of further operations until the end of the primary term. If production in paying quantities is not obtained during the primary term, the lease shall terminate at the end of the primary term unless prior thereto lessee commences additional drilling operations and makes application for an extension of the lease and pays the extension fee pursuant to subsection (d) of this section.

(2) Cessation of production and drilling and reworking operations.

(A) Lessee may maintain a lease that has ceased production in paying quantities at the expiration of the primary term, or at anytime thereafter, by conducting drilling or reworking operations.

(B) For purposes of this section, a lease shall be considered to be at the expiration of the primary term if actual production ceases within the last 60 days of the primary term of the lease.

(C) One drilling or reworking operation consists of all the activities designed and conducted on a well in an effort to obtain or enhance production from a well. One drilling or reworking operation ends when lessee obtains production in paying quantities or when lessee abandons efforts to obtain or enhance actual production.

(D) One drilling or reworking operation will maintain a lease at or after the expiration of the primary term if:

(i) drilling or reworking operations begin within 60 days of the cessation of production in paying quantities (referred to as the initial 60-day period);

(ii) lessee, in good faith and with reasonable diligence, pursues the drilling or reworking activities begun during the initial 60-day period without interruptions totalling more than 60 days during the entire drilling or reworking operation; and

(iii) the drilling or reworking commenced within the initial 60-day period results in production in paying quantities, or, if such drilling or reworking results in the completion of the well as a dry hole, additional drilling or reworking operations are commenced.

(E) Upon the completion of drilling or reworking operations and the resumption of production in paying quantities or upon the completion of a well as a dry hole, lessee shall furnish the GLO an affidavit detailing the operations conducted and the date of such operations. All forms filed with the RRC, including, but not limited to, RRC forms W-2, W-3, or G-1 shall be filed simultaneously with the GLO.

(F) Lessee shall give written notice to the GLO within five days of any cessation of production.

(d) Extension of the primary term.

(1) If production in paying quantities has not been obtained during the primary term, an extension of the primary term may be obtained if lessee is conducting actual drilling operations in good faith and in a workmanlike manner with reasonable diligence.

(A) Requirements. The term "actual drilling operations," as used in this section, means that a permit has been obtained from the RRC and that actual work is in progress to drill a well. Preliminary work, such as grading roads, moving equipment, digging slush pits, or staking locations will be sufficient as long as the actual spudding of the well occurs within a reasonable time, and operations continue in a diligent manner toward the completion of a well. Lessee shall give the GLO 10 working days notice of the intention to commence drilling operations.

(B) Application. An application to extend the term of the lease, accompanied by the correct payment, must be received by the GLO on or before the expiration date of the primary term or extension period. If such application and payment are not timely received, the lease shall expire automatically on the last day of the primary term or extension period.

(C) Payments. The payments required to extend the primary term of a lease for 30 days are as follows:

(i) lease covering 640 acres or less–$3,000.

(ii) lease covering more than 640 acres–$6,000.

(D) Affidavits required. Immediately following the expiration of the primary term or extension period, lessee shall file an affidavit of drilling operations. The affidavit shall reflect the date lessee commenced operations, the drilling operations being conducted by lessee, and shall state that on the last day of the primary term or the extension period, actual drilling operations were being conducted in good faith and in a workmanlike manner with reasonable diligence.

(E) Additional extensions. Any extension is valid for 30 days and as long thereafter as oil or gas is produced in paying quantities. Additional extensions for 30 days may be obtained by filing:

(i) an application for extension accompanied by the appropriate payment prior to the expiration of the previous 30-day extension and notice of the date lessee intends to continue drilling operations; and

(ii) an affidavit of drilling operations immediately following the expiration of the previous 30-day extension.

(2) A lease may not be extended for more than 390 days after the expiration of the primary term. The lease will terminate automatically at the expiration of the maximum extended term unless a well capable of producing oil or gas in paying quantities has been completed.

(e) Suspension of the terms of oil and gas leases.

(1) General conditions. A lessee may apply for a suspension of the terms of a lease if one or more of the following conditions exists:

(A) litigation (the Texas Natural Resources Code, §52.028);

(B) denial of access or permit (the Texas Natural Resources Code, §52. 0301);

(C) force majeure (lease provision).

(2) Litigation. If a lease issued by the commissioner is the subject of litigation relating to the validity of the lease or to the commissioner's authority to issue the lease, the lease will be suspended under the following terms.

(A) The primary term of the lease will be suspended and all obligations imposed by the lease shall be set aside from the date suit was filed until a final judgment is rendered.

(B) After a final judgment is rendered, the primary term will recommence for the remainder of the term, and all duties and obligations under the lease will be operative.

(C) Lessee shall continue to be liable for and shall pay all delay rentals and royalties accruing during the period of litigation. If the delay rentals are not paid as required by the lease, the lease shall not automatically terminate, but the delay rentals shall continue to be an obligation owed by lessee. If the lease is invalidated, rentals shall be refunded to lessee.

(3) Denial of access or permit. If a lessee is denied access to the leased property or is denied a permit to drill on or produce from the leased premises by any duly constituted authority of the United States, and lessee has made a good faith attempt to obtain access to the leased premises or to obtain a permit to drill thereon, the SLB may suspend the terms of the lease under the following terms.

(A) The primary term and all other lease terms, except for the payment of delay rentals, may be suspended from the date the lessee was effectually denied access or a permit.

(B) During the period of suspension, lessee must pay all delay rentals required under the lease on or before the anniversary date.

(C) The primary term and all the suspended obligations and conditions will recommence when the SLB determines that the cause for suspension has ceased to exist.

(4) Force majeure. If lessee, having made a good faith effort to comply with the terms of the lease, to conduct drilling operations, or to produce oil or gas, is prevented from doing so by reason of war, rebellion, riots, strike, fire, acts of God, or any order, rule, or regulation of governmental authority, then the lease may be suspended as follows.

(A) The primary term will be suspended from the date lessee is prevented from producing oil or gas or otherwise complying with the terms of the lease.

(B) The primary term will recommence when the event giving rise to the force majeure ceases to exist.

(C) Lessee must pay an amount equal to the delay rental on or before each anniversary date of the lease during the period of suspension whether during the primary or secondary term.

(5) Procedure.

(A) A lessee seeking a suspension of the terms of a lease shall submit a written request to the GLO, detailing the reasons for the suspension.

(B) The GLO will evaluate the request and any supporting documentation submitted. Applicants should be prepared to submit any additional information requested and should be prepared to appear before the SLB if requested to do so.

(C) After evaluation, the GLO will submit a recommendation to the SLB at its next regular meeting. The SLB may accept or reject the recommendation and may impose additional terms as a condition to suspending the lease.

(D) A lessee granted a suspension shall submit a status report to the SLB six months after the effective date of the suspension and at six-month intervals thereafter as long as the cause for suspension exists. The status report shall detail relevant information explaining what actions have been taken to remove or avoid the cause for suspension.

(E) In addition to the status report, each lessee granted a suspension shall immediately notify the SLB of developments which affect the terms of the suspension and shall promptly notify the SLB when the cause for suspension ends.

(f) Producing the state lease.

(1) Term. A lease shall remain in full force and effect so long as oil or gas is being produced in paying quantities.

(2) Producing in paying quantities. A lease shall be considered to be producing in paying quantities during a six-month period when receipts from the sale of oil or gas produced exceed the lease's total operating expenses and a reasonably prudent operator would continue to operate the well in the same manner for the purpose of making a profit and not merely for speculation.

(A) Lessee shall have the burden of proving that a well is producing (or is capable of producing) in paying quantities, and shall provide any and all documentation requested or required by the GLO staff to make that assessment.

(B) Minimum royalty payments will not be considered as revenue from production for purposes of either the habendum clause of the lease or for calculating whether a well is capable of producing in paying quantities.

(3) Notice Required. Written notice of all operations on a state lease shall be submitted to the commissioner by lessee or operator within five days of spud date, workover, re-entry, temporary abandonment, or plugging and abandonment of any well. Such written notice to the GLO shall consist of copies of all completed forms filed with the RRC.

(4) Presumption of non-production. RRC production reports or records which reflect either zero, no report, or the like, shall be presumed to be evidence of no production in the absence of probative evidence to the contrary.

(5) Division orders. All division orders listing an interest in a state lease or a lease covering land in which the state retains a free royalty must be filed with the GLO.

(A) Division orders will be reviewed to insure that the state's interest is listed correctly. If the state's interest is listed incorrectly, the division order will be returned for revision. Failure to detect an error in a division order and to return it for revision will in no way bind the state to the terms of that division order.

(B) By letter, the GLO will acknowledge receipt of each division order which correctly lists the state's interest. However, this letter will not in any way bind the state to the terms of the division order. GLO employees are not authorized to sign or execute division orders, and no action of a GLO employee may bind the state to any terms contained within a division order.

(g) Shut-in royalty (constructive production).

(1) Reasons for shut-in. A well capable of producing oil or gas in paying quantities may be shut-in at any time for lack of suitable production facilities or for lack of a suitable market.

(2) Well defined. For purposes of this section, a well shall be defined as any one completion at a particular depth,

zone, horizon, or stratigraphic unit.

(3) Due date. To maintain a lease in effect by payment of shut-in royalty, payment must be received by the GLO within 60 days of the latest of the following dates:

(A) the expiration of the primary term;

(B) the date the well ceases to produce oil or gas; or

(C) the date lessee completes drilling or reworking operations in accordance with the lease.

(4) Effect of payment. When a shut-in royalty is timely paid and received the lessee shall retain the rights granted under the lease and postpone the actual production of oil or gas for one year from the first day of the month following the month the well was shut-in.

(A) The lease will terminate automatically on the anniversary date of the first day of the month following the month the well was shut-in unless lessee commences drilling or reworking operations or actual production of oil or gas in paying quantities on or before 60 days from such anniversary date or pays another shut-in royalty.

(B) The production of oil or gas in paying quantities and the delivery to the GLO of the shut-in royalty are at the option of the lessee. Lessee shall not be obligated and no liability shall accrue to a lessee for failure to produce in paying quantities, drill, or pay the shut-in royalty. The production in paying quantities or paying the shut-in royalty are conditions to maintaining the lease in effect.

(5) Automatic termination. Receipt by the GLO of the shut-in royalty is necessary to constitute proper payment. Anything less than actual receipt of the shut-in royalty payment by the GLO shall be inadequate and improper and shall result in automatic termination of the lease.

(6) Timely payment. The date, stamped, punched, or otherwise reflected on the delay rental payment receipt, check, draft, stub, or envelope by the GLO shall be conclusive of the date of actual receipt by the GLO.

(A) Payment of a shut-in royalty shall be considered timely, irrespective of the date of actual receipt, if the lessee establishes that:

(i) payment was dispatched to the GLO's correct address by certified or registered mail;

(ii) an acceptance form was initialed by an employee of the United States Post Office, a common carrier or its equivalent and date stamped by the United States Post Office, a common carrier or its equivalent (not including private postal meters) showing the letter was received and accepted at least 14 days before the payment was due; and

(iii) payment is actually received by the GLO no later than 20 days after the shut-in royalty payment was due.

(B) Subparagraph (A) of this subsection shall not apply if:

(i) an oil and gas lease has been issued by the state to another lessee prior to receipt of notice by the GLO from lessee contending that subparagraph (A) of this paragraph would apply; or

(ii) the oil and gas interests of the state have been patented, deeded, or otherwise conveyed or disposed of and as a result, are unavailable for lease by the state.

(C) If the due date of a shut-in royalty payment should fall on an official state or federal holiday or weekend (Saturday or Sunday), the due date shall be extended to the next day the GLO is open to conduct official businesses.

(7) Amount of shut-in payment. If a lessee timely tenders a shut-in royalty but pays less than the amount specified in the lease, the lease will terminate automatically on the shut-in royalty due date.

(A) To maintain a lease by payment of a shut-in royalty, lessee must pay the greater of the two following amounts:

(i) double the annual delay rental provided in the lease; or

(ii) $1,200 for each shut-in well which is capable of producing oil or gas in paying quantities.

(B) In calculating the shut-in royalty for a multiple-completion well, each separate formation or productive zone which is capable of producing hydrocarbons will be treated as a separate well.

(8) Effect of lease production. No shut-in royalty shall be necessary to maintain the lease under this section if the lease is being held in effect by production from some other well, by drilling or reworking operations, or by some other provision of the lease.

(9) Affidavit requirement. Upon receipt of a shut-in royalty, the GLO will send a shut-in affidavit to the lease operator. Lessee, the operator, or a representative of either shall complete the affidavit and return it to the GLO. Failure to complete and return the affidavit as required may result in forfeiture of the lease.

(10) Subsequent shut-in payments. If, after a well has been shut-in and the shut-in royalty has been properly paid, the well is not producing on the anniversary of the first day of the month following the shut-in of the well (the effective shut-in date), lessee may pay another shut-in royalty on or before such anniversary date. Such payment will maintain the lease for an additional year.

(11) Term of shut-in. A state lease may be maintained by payment of shut-in royalty for a maximum term of five years. At the end of the maximum shut-in period provided for in the lease, the lease will terminate for cessation of production unless the operator or lessee begins actual production of oil or gas from the previously shut-in well or wells. After obtaining production from a previously shut-in well, the well may be shut-in again for a maximum term of five years or as provided in the lease.

(12) Intermittent production. A well on a lease maintained in force by shut-in royalty may be produced intermittently and shut-in as often as desired. No additional shut-in payment is required while the lease is held by shut-in royalty. However, such intermittent production and shut-in shall not operate to change the anniversary date of the shut-in period. Subsequent production, drilling, or additional payment of a shut-in royalty will be required to maintain the lease.

(13) Shut-in royalty on pooled leases. Unless otherwise provided in the pooling agreement, a shut-in well located within the boundaries of a pooled unit will be considered to be a shut-in well located upon each state lease within the pooled unit. However, the leases included within the pooled unit shall terminate unless shut-in royalties are paid on each lease wholly or partially within the unit, according to the terms of each lease. Shut-in royalties due under each lease may be paid based upon the number of acres covered by a state lease included within the boundaries of the pooled unit, but in no event less than $1,200 per well shut-in.

(14) Undivided interests. Where there are multiple owners of undivided interests in a lease, the failure of any interest owner to pay its proportionate share of the shut-in royalty will result in termination of the entire lease, not just in the termination of the interest of the party failing to pay its portion of the shut-in royalty.

(15) Effect of improper payment. Neither receipt nor retention by the GLO of an improperly paid shut-in royalty payment shall operate as a ratification or a re-grant of the interest covered by a lease that has terminated because of improper payment, nor shall such receipt or retention estop the state from asserting the termination of the lease.

(h) Offset well/compensatory royalty requirement.

(1) Offset well requirement. The drilling of an offset well required because of drainage of a state lease not held by a shut-in well or payment of a compensatory royalty in lieu of an offset well shall be as follows.

(A) A lessee shall drill an offset well on land covered by a state lease when such lease is affected by a draining well. A well is considered a draining well when:

(i) a well producing in paying quantities is within 1,000 feet of land covered by a state lease or a well is actually draining state property;

(ii) the well has been completed on private acreage or on state land with a lesser royalty; and

(iii) lessee has not obtained approval to pay compensatory royalties in lieu of drilling an offset well.

(B) It shall be a rebuttable presumption that a producing well located within 1,000 feet of land covered by a state lease is draining the land covered by the state lease.

(C) A lessee required to drill an offset well shall, in good faith and with diligence, begin the drilling within 60 days (100 days for Relinquishment Act lands) of the date of first production from the draining well. An offset well shall be drilled to a depth and in such a manner as to prevent undue drainage of oil or gas from state land.

(D) Within 30 days of completion or abandonment of an offset well, a log of each well shall be filed with the GLO.

(2) Compensatory royalty in lieu of offset wells. Upon the commissioner's written approval, payment of a compensatory royalty will replace the obligation to drill an offset well. The amount of payment of a compensatory royalty shall be as follows:

(A) A lessee desiring to pay compensatory royalty in lieu of drilling an offset well should make written application to the petroleum and minerals division of the GLO and explain the reason the drilling of an offset well is not prudent or feasible.

(B) Lessee should be prepared to submit any evidence necessary to support the application to pay compensatory royalty in lieu of drilling an offset well.

(C) Evidence to be submitted may consist of geological, geophysical, economic, engineering, production data from the offset well, and any other data regarding the leased premises that may be requested for a complete evaluation and accurate determination of the amount, if any, of compensatory royalty.

(D) The amount of compensatory royalty shall be at the royalty rate provided by the state lease under which the offset well requirement arose and shall be based on the market value at the well of production from the well draining state land. However, the amount of compensatory royalty may be reduced proportionately based upon the amount of state minerals being drained as reflected by the pertinent well data submitted by the applicant or based upon the amount of acreage adjacent to the draining well.

(E) If payment of compensatory royalty is approved, lessee shall have the remainder of the month in which payment of a compensatory royalty is approved plus an additional month to pay such compensatory royalty. Compensatory royalties due thereafter shall be paid monthly.

(3) Compensatory royalty on shut-in well. Compensatory royalty due because of drainage of a state lease held by a shut-in well shall be paid as follows.

(A) The right to maintain a state lease by payment of shut-in royalty shall cease when such lease is affected by a draining well. A well is considered a draining well when:

(i) oil or gas is being produced in paying quantities from a well completed in the same reservoir and located within 1,000 feet from the leased premises held by payment of shut-in royalty; or

(ii) in any case where land covered by a state lease held by payment of shut-in royalty is being drained.

(B) It shall be rebuttable presumption that a well meeting the requirements of subsection (i)(I)(A)(i) of this section is draining land covered by a state lease.

(C) A state lease held by payment of a shut-in royalty that is being drained by a producing well on premises adjacent to such state lease shall remain in effect only until the next shut-in royalty due date. The lease may be held in effect after such date for four additional and successive years of one year each by payment of a compensatory royalty.

(D) The amount of compensatory royalty shall be as follows.

(i) The compensatory royalty shall be an amount determined by the royalty rate in the state lease being drained on the market value of production from the draining well.

(ii) At the request of lessee, the commissioner may reduce the amount of compensatory royalty due. A lessee making such a request must show that the amount of compensatory royalty should be reduced based upon the amount of drainage from the state lease.

(I) Lessee should be prepared to submit any evidence necessary to support the request to reduce the amount of compensatory royalty due.

(II) Evidence to be submitted to the GLO may consist of geological, geophysical, economic, engineering, and production data from the draining well, and any other data regarding the leased premises which may be requested for a complete evaluation and accurate determination of the amount of compensatory royalty, if any, to be paid.

(iii) The compensatory royalty due in any 12-month period shall never be an amount less than the annual shut-in royalty. If the compensatory royalty due in any 12-month period is less than the annual shut-in royalty, lessee shall pay the difference between the annual shut-in royalty and the compensatory royalty due within 30 days of the end of the 12-month period.

(E) Compensatory royalties due under this subsection shall be paid monthly by the last day of the month following the month in which oil or gas from the draining well is marketed.

(i) Lessee operations.

(1) Pollution controls.

(A) All wells shall be drilled, reworked, cleaned, tested, and produced in a manner as to prevent pollution. In the event of pollution, lessee shall use all reasonable means to recapture all hydrocarbons or other pollutants which may have escaped and shall be responsible for all damage to public and private property.

(B) All operations shall be conducted using the highest degree of care. No discharge of solid waste or garbage shall be allowed into state waters from any drilling or support vessel, production platform, crew or supply boat, barge, jack-up rig, or other equipment located on the leased area.

(i) Solid waste shall include, but shall not be limited to, containers, equipment, rubbish, plastic, glass, and other man-made nonbiodegradable items.

(ii) A sign must be displayed in a high traffic area on each vessel and manned platform stating, "Discharge of any solid waste or garbage into state waters from vessels or platforms is strictly prohibited and may subject a State of Texas lease to forfeiture." Such statement shall be in lettering at least one inch in size.

(C) Failure to comply with the requirements of this subsection may result in the maximum penalty allowed by law, including forfeiture of the lease. Lessee shall be liable for the damages caused by such failure and any costs and expenses incurred in cleaning areas affected by the discharged waste.

(D) All pollution resulting from operations on a state lease, including oil spills, pipeline leaks resulting in five barrels or more on upland tracts, and one barrel or more on riverbed and submerged tracts, shall be reported to the GLO immediately upon discovery. Copies of reports required by local, state, and federal agencies shall be submitted simultaneously to the commissioner.

(E) Waste oil from all mechanical equipment shall be disposed in such manner as to prevent pollution.

(F) No salt water, slush, or mud materials shall be disposed of in the water before all oil or chemicals harmful to marine life have been removed therefrom. Sufficient precautions shall be exercised to prevent pollution and destruction of marine life or its habitat.

(G) All wells producing liquids must be produced through an oil and gas separator of ample capacity and in good working order. Gas-oil separators and tank batteries may be located either offshore or on land.

(H) The movement of oil from wells shall be made in such manner as to prevent oil spills.

(i) In submerged areas, all oil lines leading from wells to storage shall be tested to 500 pounds per square inch water pressure before use and in no event to a pressure below the anticipated working pressure. All such lines shall be placed below the bottom of the gulf or bay at a depth not less than 24 inches or placed on a structure above mean high tide when permitted by the United States Corps of Engineers.

(ii) Each line shall be constructed from new or reconditioned pipe in first class condition, and before it is submerged, it shall be doped and treated in such manner as to offer reasonable resistance to the corrosive effect of salt water, but it shall not be necessary to dope or treat the portion of a line which is not submerged.

(iii) The transportation of oil and gas by pipeline shall be subject to the United States Department of Transportation pipeline regulations and any amendments thereto.

(iv) When a leak occurs in a pipeline or flow line carrying oil, distillate, or geothermal energy, the flow will be stopped at once. When it is necessary to break out the line for repairs, all liquids will be cleared from the line before repair is begun.

(2) Commingling production. Requests to commingle production from state leases should be sent with supporting data to the Commissioner of the General Land Office, Attention: Petroleum and Minerals Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

(3) Applicable laws. All drilling, producing, gathering, transporting, and processing operations shall be subject to applicable city, county, state, federal laws.

(4) Inspections. The commissioners of the GLO, RRC, and the Water Quality Board and their representatives, shall at all times have access to the premises upon which wells are being drilled or produced for oil, gas, or geothermal energy to make inspections of all drilling, producing, gathering, and processing operations, or for any other reason deemed necessary.

(5) Other records. At any time, or from time to time, the GLO may require any additional records relating to any aspect of lease operations and accounting.

(6) Identification. All well locations, drilling barges, platforms, and other structures shall be marked so as to identify the state tract number, well number, and the company operating the lease.

(7) Lighting. Proper signal lights shall be installed at or near all wells and structures which are located in the submerged areas within the jurisdiction of the State of Texas. All lighting shall be in accordance with the United States Coast Guard interim instructions, and any amendments thereto. If any well or structure located on lands within the jurisdiction of the state are exempt from lighting under United States Coast Guard regulations, a copy of the exemption must be filed with the GLO.

(8) Abandonment. When a well site is to be abandoned, all wells shall be plugged and all structures removed in compliance with the RRC and United States Corps of Engineers regulations. All fills for roads and drill sites shall be removed if requested by the commissioner.

*§9.7. Royalty and Reporting Obligations to the State.*

(a) In-kind royalties and reports. Producers meeting their royalty obligations by delivering the state's royalty in-kind shall contact the GLO for specific instructions for making and reporting in-kind royalties. Purchasers of the state's oil or gas in-kind must make the payment for this oil or gas separately from any payment of monetary royalties.

(b) Monetary royalties and reports.

(1) Basis for computing royalties.

(A) Gross proceeds. Oil and gas royalties due under each lease must be computed on the gross proceeds received by the seller, including amounts collected to reimburse the seller for severance taxes and production-related costs. No deduction may be made for production or severance taxes, or for the cost of producing, processing, transporting, and otherwise making the oil, gas, and other products produced from the premises ready for sale or use.

(B) Volume subject to royalty.

(i) General. Royalties are due and payable on 100% of each lease's gross production of oil and gas unless the lease contains language expressly exempting certain dispositions of oil and/or gas from state royalties.

(ii) Oil sales and stocks. As a matter of convenience, during periods of regular sales, the GLO will permit monthly oil royalties to be based on the number of barrels sold (or otherwise disposed of) in a given month rather than on the gross production as may be required by the lease. Unless the lessee is otherwise notified by the GLO, no royalties are payable on lease stocks until such stocks are either sold or otherwise disposed of. The GLO reserves the right to require at any time, or from time to time, that royalties be paid on gross production rather than on barrels sold. It will be GLO practice to require that royalties be paid on existing stocks when there have been no sales from such stocks for several months.

(C) Plant products. The volume and value of plant products subject to state royalty shall be calculated in accordance with the lease under which the gas is produced and processed and shall never be less than the minimum percentage specified in the lease. In cases where the lease does not specify the manner in which plant product royalties are to be calculated, then the volume and value of plant products subject to state royalty shall be that volume and value for which settlement is being made to the producer, under a gas contract prudently negotiated between the producer and processor. When gas is processed for the recovery of liquid hydrocarbons or other

products, the royalties on residue gas and plant products shall not be less than the royalties which would have been due had the gas not been processed.

(D) Market value. Nothing in this subsection shall limit or waive the right of the state to receive its royalties based on market value of the oil and gas produced, if authorized by the lease, unit agreement, judgment, or other contract authorized by law.

(E) Determination of market value.

(i) For the purpose of computing and paying royalties to the state based on market value, the market value shall be presumed to be the gross proceeds received pursuant to a bona fide contract entered into at arm's length between nonaffiliated parties of adverse economic interests.

(ii) If a contract was not negotiated at arm's length, or was between affiliated parties, the presumption that market value is equal to gross proceeds shall not apply. In this situation, the lessee has the burden to establish that royalties paid to the state are based on market value.

(iii) The commissioner may overcome the presumption established under subsection (b)(1)(E)(i) of this section and assess additional royalties due by establishing a different price based on other sales in the general area which are comparable in time, quality, volume, and legal characteristics. If some of this information is not available to the commissioner, an assessment will be based on the best information available.

(iv) A lessee may challenge an assessment of additional royalties due by submitting information which establishes the prices used for comparison by the commissioner involve products of significantly different quality, were based on contracts to deliver significantly different volumes or for different terms, were not from a relevant market, were derived from an area in which deliverability is significantly different, or by presenting any other information which could establish a more accurate market price. However, under no circumstances will the state's royalty be computed on less than gross proceeds received, including reimbursements received for severance taxes and production-related costs.

(v) Parties are affiliated under this subsection if they are related by blood, marriage, or common business enterprise, are members of a corporate affiliated group, or where one party owns a 10% or greater interest in the other.

(vi) The term "General area," as used in this subsection, means the smallest geographical area which contains sufficient data to establish a market price. Examples include a unit, a field, a county, or the applicable RRC district.

(vii) For the purpose of computing and paying oil royalties to the state based upon a market value determined by the highest posted price, that phrase is defined as the greater of:

(I) the highest price available to the producer; or

(II) the gross price posted by the purchaser of the oil, less a reasonable transportation allowance after sale and delivery if the price bulletin reflects on its face that the purchaser will deduct a marketing or transportation allowance, and a transportation allowance is actually deducted by the purchaser from its gross price.

(viii) For the purposes of subsection (b)(1)(E)(vii)(I) of this section, a price will be presumed to be available to the producer if it is offered in the field where the lease is located at the time of sale. A producer may overcome the presumption by submitting evidence that the price is not actually available to the producer. The term "available" and "actually available" as used in this subsection mean that a price is being offered to nonaffiliated parties by posting, contract listing, or amendment, or otherwise and that if a producer presented a barrel of oil to an entity offering said price, assuming all quality specifications for the price were met, that producer would, in fact, receive that offered price.

(ix) Subsection (b)(1)(E)(vii) of this section shall not be construed to allow the lessee, when calculating royalties payable to the state, to make any deductions for the cost of producing, processing, or transporting the oil prior to its sale and delivery.

(2) Royalty payments and reports.

(A) Mode of payment. Except as provided in subsection (a) of this section, royalties and other monies due may be paid by cash or check, money order, or sight draft made payable to the commissioner.

(B) Information required with royalty payments. All royalty payments must show the assigned GLO lease number and the amount of oil and gas royalty being paid. Royalty payments not identified by the lease number shall be considered delinquent and shall be subject to the delinquency provisions of subsection (b) (3) of this section.

(C) Required reports. Production/royalty reports (Form MA-84), unit production reports (Form MA-84U), reporting data forms (RDF), and other required reporting documents for gas or oil and condensate must be completed in the form and manner prescribed by the GLO and must be accompanied by and attached to all supporting documents necessary to substantiate the gross production, disposition, and market value of the oil and condensate, gas, and other products produced therefrom. Failure to comply with the statutes and the reporting requirements of this chapter may subject a lease to forfeiture, delinquency penalties, or both.

(D) Timely receipt of royalty payments and reports.

(i) For the purpose of this subsection, the GLO will timely receive a royalty payment or report if the payment or report:

(I) is placed in a postpaid, properly addressed wrapper; and

(II) is deposited with the United States Postal Service or any parcel delivery service at least one day before it is due and such deposit is evidenced by a postmark, a postal meter stamp, or a receipt.

(ii) If a royalty payment or report is due on a Sunday or a legal state or federal holiday, then such payment or report must be either received by the GLO on the next calendar day which is not a Sunday or a holiday or postmarked or stamped prior to the next calendar day which is not a Sunday or a holiday.

(E) Oil royalties–due date. All oil and condensate royalties must be timely received in the GLO on or before the fifth day of the second month following the month of production.

(F) Gas royalties–due date. All gas royalties must be timely received in the GLO on or before the 15th day of the second month following the month of production.

(G) Required reports–due date. Production/royalty reports (Form MA-84), unit production reports (Form MA-84U), reporting data forms (RDF), and other required reporting documents for gas or oil and condensate must be timely received in the GLO on or before the day the corresponding royalty payment is due, except for reports on royalties paid by electronic funds transfer or reports filed on magnetic media. MA-84's, MA-84U's, RDF's, and other required reporting documents for royalties paid by electronic funds transfer and reports filed on magnetic media must be timely received in the GLO on or before five days after the corresponding royalty payment is due.

(H) Gas contracts. Lessees shall file with the GLO a copy of all contracts under which gas is sold or processed and all subsequent agreements or amendments to such contracts within 30 days of entering into or making such contracts, agreements or amendments. Such contracts, agreements, and amendments, when received by the GLO, will be held in confidence by the GLO unless otherwise authorized by lessee.

(I) Gas contract brief (Form MA-5). Each gas contract, agreement, or contract amendment must be accompanied by a gas contract brief (Form MA-5) completed in the form and manner prescribed by the GLO even if the GLO is taking its royalty in-kind. All contracts, correspondence, or requests for gas contract briefs should be directed to: General Land Office, Energy Resources Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701, Attention: Gas Contracts Administrator.

(J) Settlements and judgments. Lessee shall file with the GLO a copy of each settlement reached or judgment rendered in a dispute between the lessee and a purchaser regarding production from and/or contracts relating to state lands. These documents must be filed with the GLO within 30 days of entering into such settlement or within 30 days of the rendering of such judgment.

(K) Other records. At any time, or from time to time, the GLO may require any additional records relating to any aspect of lease operations and accounting.

(L) Responsibility of lessee to file royalty payments and required reports. Parties other than the lessee may remit royalties to the state on the lessee's behalf. This practice does not relieve the lessee of any statutory or contractual obligation to pay royalty or file reports and supporting documents. The lessee bears full responsibility for paying royalties and for filing reports and supporting documents as required in this chapter.

(M) Cooperation of operators, purchasers, and lessees. The GLO often requests reports and other records from lease operators and purchasers rather than from lessees. Operators and purchasers should be aware that their actions may subject a lease to a delinquency penalty or forfeiture. All operators, lessees, and purchasers must cooperate to responsibly discharge their obligations to each other and to the state.

(N) State's lien. The state has a first lien on all oil and gas produced from the leased area to secure the payment of all unpaid royalty or other sums of money that may become due.

(O) Certification of sufficient royalties. The GLO will not be responsible for certifying, prior to the rental anniversary date, that sufficient royalty has been received to obviate the necessity of paying rentals or minimum royalties as may be required by lease. Lessees should maintain adequate records relating to lease royalty and rental status to determine if additional liability exists. If there is uncertainty concerning whether or not rental or minimum royalties are due, a lease or leases may be maintained in effect by remitting the annual amount required under each lease. Payments received in this manner and thereafter found not due will be refunded or credit granted.

(P) Partial payments. Partial payment of amounts assessed (delinquent royalties, penalty, and interest) will first be applied to unpaid penalty and interest and then to delinquent royalties. Penalty and interest will continue to accrue until the delinquent royalties are fully paid.

(3) Penalties and interest.

(A) Penalties on delinquencies. Any royalty not paid when due, or any required report or document not submitted when due, is delinquent and penalties as provided in this paragraph shall be added. Royalty payments which are not accompanied by the required royalty affidavit which identifies the GLO lease number are also delinquent. The penalties on delinquent royalties specified in this subsection shall not be assessed in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to fair market value.

(i) For royalties and reports due on or after September 1, 1985, including those for oil and gas produced since July 1, 1985:

(I) a penalty of 5.0% of the delinquent amount or $25, whichever is greater, shall be added to any royalty which is delinquent 30 days or less;

(II) a penalty of 10% of the delinquent amount or $25, whichever is greater, shall be added to any royalty which is more than 30 days delinquent;

(III) a penalty of $10 per document may be added for each 30 day period that each report, affidavit or other document is delinquent. This penalty of $10 per document will be imposed only after the commissioner or a designated representative has notified the lessee in writing that reports, affidavits, or documents are not being filed correctly and that the penalty will be assessed on subsequent reporting errors.

(ii) For royalties and reports due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985:

(I) a penalty of 1.0% of the delinquent amount or $5, whichever is greater, shall be added for each 30 day period that any royalty is delinquent;

(II) a penalty of $5 per document shall be added for each 30 day period that each report, affidavit, or other document is delinquent.

(iii) For royalties and reports due before September 1, 1975, including those for oil and gas produced prior to August 1, 1975, there is no penalty for delinquent royalties or delinquent reports.

(B) Interest on delinquencies. Any royalty not paid when due is delinquent and shall accrue interest as provided in this subsection.

(i) For royalties due on or after September 1, 1985, including those for oil and gas produced since July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 12% per year (simple interest) pursuant to the Texas Natural Resources Code, §52.131(g);

(II) interest shall begin to accrue 60 days after the due date.

(ii) For royalties due before September 1, 1985, including those for oil and gas produced prior to July 1, 1985:

(I) interest shall accrue on all delinquent royalties at the rate of 6.0% per year compounded daily pursuant to Texas Civil Statutes, Article 5069-1.03;

(II) interest shall begin to accrue 30 days after the date due.

(C) Penalties for fraud. The commissioner shall add a penalty of 25% of the delinquent amount if any part of the delinquency is due to fraud or an attempt to evade the provisions of statutes or rules governing payment of royalty. This penalty shall be applied in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to the fair market value. This penalty shall be in addition to any other penalty assessed.

(D) Forfeiture. The state's power to forfeit a lease shall not be affected by the assessment or payment of any delinquency, penalty, or interest as provided in this paragraph. Specifically, failure to pay royalties and other sums of money within 30 days of the due date or the failure to file reports completed in the form and manner prescribed by this section shall subject a lease to forfeiture under §9.8 of this title (relating to Discontinuing the Lease Relationship`.

(4) Corrections and adjustments to royalty payments and reports.

(A) Nonroutine corrections and/or adjustments, as used in this section, shall be defined as those corrections and adjustments that affect the reports for more than one month and that seek to change the originally reported royalties due by more than 10%.

(B) All nonroutine corrections and/or adjustments resulting in a credit must be authorized in writing by the commissioner or an authorized representative prior to taking the credit. Any nonroutine credit adjustment taken without this approval may not be used to offset royalty due on current reports. The application of unapproved credits will result in a current month delinquency and the assessment of associated penalties and interest.

(C) Effective with the production month of March 1989, all prior month adjustments must be submitted on MA-84/84U report documents separate from the reports containing the current month royalty activity. The MA-84/84U containing prior month adjustments must be labeled as "Amended Reports" (underlined).

(5) Temporary reduction of gas royalty rates.

(A) Prerequisites. Application for a temporary reduction of the royalty rates established may be considered by the SLB if:

(i) the lease covers any of the state lands described in §9.2 of this title (relating to Leasing Guide);

(ii) state land was leased by the SLB on the basis of a royalty bid and at a royalty rate exceeding 25%; and

(iii) the lease has not been pooled or unitized with other leases.

(B) Amount of reduction. If the value of gas from such lands is at or below $3 for each 1,000 cubic feet of gas, the board may reduce the royalty rate for gas produced from such lands for any term set by the SLB, such term to be set between September 1, 1987, the effective date of this section, and before September 1, 1990, as follows:

(i) for gas valued as $1.50 or less per mcf of gas, the board may reduce a royalty rate to 25%;

(ii) for gas valued from 1.51 to $2 per mcf of gas, the board may reduce a royalty rate to 30%;

(iii) for gas valued from $2.01 to $2.50 per mcf of gas, the board may reduce a royalty rate to 35%;

(iv) for gas valued from $2.51 to $3 per mcf of gas, the board may reduce a royalty rate to 40%.

(C) Definition of value. For purposes of this subsection, the value of the gas is defined as the highest market price paid or offered for gas of comparable quality in the general area where produced and when run, or the gross price paid or offered to the producer, whichever is greater.

(D) Request for reduction. A lessee seeking the approval of the SLB for a temporary reduction in gas royalty rates must make written request for an application to the Petroleum and Minerals Division, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701. The application should be completed and returned to the Petroleum and Minerals Division of the GLO.

(i) The applicant must submit an affidavit and documentation in support of its request for a temporary reduction of gas royalty rates. The affidavit will attest to the fact that the requirements set out in this subsection have been satisfied. The accompanying documentation will contain pertinent lease data, production and reserve data, gas price data, development data, and any other information which may be required to support the application, including the reason for requesting a royalty reduction.

(ii) The SLB will consider the request for temporary reduction in gas royalty rates based upon lessee's affidavit, documents in support thereof, and the recommendation of the Petroleum and Minerals Division.

(iii) The SLB may reevaluate the temporary reduction in gas royalty rates at any time.

(E) Verification of gas valuation. The gas valuation information submitted by the lessee will be subject to verification by the Royalty Audit Division.

(F) Effective dates for reduced royalty rates. The reduced royalty rates shall be effective beginning the first day of the next month following approval by the SLB. Royalty rates on gas produced after September 1, 1990 will not be subject to reduction under this section.

(G) No retroactive effect. The reduced royalty rates will not be applied retroactively for previous months, production.

*§9.8. Discontinuing the Leasehold Relationship.*

(a) How the leasehold relationship may be discontinued. Any such discontinuance, except for termination, is effective only upon complete compliance with subsections (a)-(e) of this section. Terminations are effective according to the terms of the lease and the laws of the state. The leasehold relationship between the state and a lessee of state oil and gas may be discontinued by the following:

(1) release;

(2) assignment;

(3) termination;

(4) forfeiture.

(b) Release.

(1) Definition. A release is a voluntary relinquishment by a party of all or part of an interest held by that party.

(2) Release of a state oil and gas lease.

(A) Release available. All or part of a state oil and gas leasehold interest may be released to the state by its lessee at any time.

(B) Procedure. A release is effectuated only by complete compliance with the following:

(i) recording the release in each county in which any part of the original acreage covered by the lease is located;

(ii) filing with the GLO the recorded original or a certified copy of the recorded original of each release recorded as required by this subsection within 90 days after the execution of each such release;

(iii) properly paying the filing fees and providing the information as required in subsection (b)(3) of this section.

(3) Fees and other required information.

(A) The following must accompany each release required to be filed and every counterpart so filed in the GLO under this subsection:

(i) the clear designation of:

(I) each mineral file number and GLO lease number affected by the release; and

(II) which leases referred to in the release are federal, state, and private leases;

(ii) the payment of the filing fee required by §1.91 of this title (relating to Fees) for each mineral file number affected by the release;

(iii) an adequate legal description of the premises released including the survey name, block, township, county, and any other descriptive information requested by the GLO; and

(iv) if a partial release, a metes and bounds description of the area so released unless the area released can be and is accurately described as a part of the section, such as the NE/4.

(B) If a release is sent to the GLO for filing that is not in compliance with this subsection, then the following shall apply:

(i) If, from the information sent for filing, the GLO can reasonably determine the property affected by the release, then the GLO shall file the release and the filing fee due shall be double the normal fee.

(ii) If, from the information sent for filing, the GLO cannot reasonably determine the property affected by the release, then that release shall be rejected for filing and returned to the sender. Any fee submitted with a rejected release may be credited toward fees due upon resubmission. When a rejected release is resubmitted, then the filing fee due shall be double the normal fee.

(4) Release of terminated lease.

(A) See subsection (d)(1) of this section for the definition of a terminated lease.

(B) A lessee should record and file a release of a terminated lease in the manner set out in this subsection. Such filing should be accompanied by the filing fee and information required by this subsection.

(c) Assignment.

(1) Definition. An assignment is a transfer of an interest in a right or property.

(2) Assignment of a state oil and gas lease.

(A) Assignment available. All or part of a state oil and gas leasehold interest may be assigned at any time.

(B) Procedure. An assignment is effectuated only by complete compliance with the following.

(i) All assignments must be recorded in each county in which all or part of the lease is located. The original recorded assignment or a certified copy thereof shall be filed in the GLO within 90 days of its execution. For purposes of this paragraph, the last execution date shown on the instrument shall be deemed to be the date of execution.

(ii) Each assignment required to be filed and every counterpart so filed with the GLO must be accompanied by the filing fee prescribed by §1.91 of this section (relating to Fees) for each mineral file number affected by the assignment. Any assignment not accompanied by the required fees shall not be accepted for filing. If an assignment is not filed within 90 days of its execution, the filing fee due shall be double the usual fee.

(iii) Partial assignments of oil and gas leases shall be filed in the same manner as complete assignments.

(iv) In-lieu assignments will not be accepted or filed in the records of the GLO.

(C) If an assignment has not been properly filed, the commissioner, at the commissioner's discretion, may forfeit the lease.

(D) The current holder of a lease or of any interest therein shall be responsible for proper filing with the GLO of any assignments not previously filed by any predecessor in interest.

(E) The heir, devisee, executor, or administrator, as the case may be, of the estate of an assignee may file a statement of the parties entitled to hold the interest of the assignee in the lease. Such statement should include a list by mineral file number of all leases affected. No filing fee shall be required.

(F) Should an assignee formally change names, a notice of name change, accompanied by a list by file numbers of all leases affected, shall be submitted to the GLO.

(G) Upon complete compliance with this subsection, the assignee will:

(i) succeed to all rights and be subject to all liabilities, obligations, penalties, and the like incurred by any prior lessee, including any liability to the state for unpaid royalty; and

(ii) assume all obligations, liabilities, and consequences arising from all covenants, conditions, and terms (whether express or implied) of the lease.

(d) Termination.

(1) Definition. A termination is the automatic non-discretionary expiration of the leasehold interest under its own terms.

(2) Causes. The circumstances under which a state oil and gas lease will terminate are determined by certain provisions in each lease and by the laws of the state. Examples of circumstances commonly resulting in lease termination are:

(A) failure to properly pay delay rentals required during the primary term of the lease (see §9.6(b) of this title (relating to Maintaining the Lease));

(B) failure to properly pay shut-in royalties due under the lease (see §9.6(g) of this title (relating to Maintaining the Lease));

(C) failure to produce the lease in paying quantities (see §9.6(f) of this title (relating to Maintaining the Lease));

(D) failure to fully comply with the rework or extension clause of the lease (see §9.6(c) and (d) of this title (relating to Maintaining the Lease)).

(3) Procedure.

(A) Termination occurs automatically whenever a condition of a lease, as defined by the lease and the laws of the state, is not met.

(B) When the GLO becomes aware of facts and circumstances which would result in the termination of a lease, the GLO will, as a courtesy, issue an initial notice of termination to the lessee as shown by the GLO files. This notice shall inform the lessee of the GLO's determination that the lease at issue has terminated and the reasons for this determination. This notice shall also inform the lessee that the lessee has 30 days in which to present evidence and convince the GLO that a termination has not occurred.

(C) If such evidence has not been presented at the expiration of the 30 day period, the mineral file shall be endorsed "terminated."

(D) Should such evidence be presented to the GLO within the 30-day period, the GLO shall review it and determine if it proves to the GLO's satisfaction that the lease at issue did not terminate. If the GLO is not so persuaded, a final notice stating this conclusion and the GLO's reasons shall be sent to the lessee and the

mineral file shall be endorsed "terminated." If the GLO is persuaded by the evidence presented that the lease at issue did not terminate, a letter explaining this conclusion shall be sent to the lessee and filed in the mineral file.

(E) Failure of the GLO to send these notices, or failure of the appropriate parties to receive these notices, will not in any way affect the termination itself nor alter any liabilities accruing before or after termination.

(F) Timely filed GLO and RRC reports will be assumed to be true and correct representations of lease activity. Failure to file a GLO or RRC report in a given month will create a presumption that there was no production in that month. If, however, other surrounding facts and circumstances convince the commissioner that a report or presumption is not accurate, the commissioner may, in the commissioner's discretion, disregard the report or presumption. The commissioner also has the discretion whether to consider any late or amended GLO or RRC reports as true and correct representations of lease activity.

(4) Release. See subsection (b)(4) of this section relating to the filing of releases of terminated leases.

(e) Forfeiture.

(1) Definition. Forfeiture is a remedy dissolving a lease that is available to the commissioner when certain breaches of provisions of a state lease have occurred.

(2) Forfeiture for failure to drill an offset well.

(A) Duty. See §9.6(h) of this title (relating to Maintaining the Lease) for a full discussion of the duty to drill offset wells.

(B) Subject to forfeiture. A lease is subject to forfeiture if there is a failure or refusal to:

(i) begin the activity required in §9.6 of this title (relating to Maintaining the Lease) within the proper time frame set out in that section; or

(ii) prosecute this activity as required and as is necessary to reasonably develop the state land and to protect it against drainage.

(3) Forfeiture for other breaches. A lease is subject to forfeiture if:

(A) a lessee or operator shall:

(i) fail or refuse to pay any sum within 30 days after it is due;

(ii) knowingly make any false return or false report concerning production or drilling;

(iii) fail to file reports in the manner required by law;

(iv) fail to comply with the GLO and RRC administrative rules and regulations;

(v) refuse the proper authority access to the records pertaining to the operations;

(vi) knowingly fail or refuse to give correct information to a proper authority;

(vii) knowingly fail or refuse to furnish the GLO correct logs of any well; or

(viii) fail to comply with any term of a lease; or

(B) the lease is assigned and the assignment is not filed in the GLO as required by law.

(4) Procedure.

(A) When sufficiently informed of facts which subject a lease to forfeiture, it is within the commissioner's discretion to forfeit that lease by endorsing the following on the mineral file:

(i) words declaring the lease forfeited;

(ii) the commissioner's signature; and

(iii) the date these actions are to

(B) Upon such endorsement, the lease and all rights and payments made thereunder shall be deemed forfeited.

(C) Promptly after forfeiture, the GLO shall mail notice of this action to those then shown in the GLO records as the current lessees of the lease and, in the case of Relinquishment Act land, to the current surface owners, at their most current addresses as shown in the GLO records.

(5) Reinstatement.

(A) Within 30 days of forfeiture for failure to drill an offset well and upon satisfactory evidence of future compliance with the applicable laws, the commissioner has the discretion to reinstate the lease upon the terms required by law and upon any other terms the commissioner may prescribe.

(B) For forfeitures due to other breaches, the commissioner has the discretion to reinstate the lease at any time before the rights of another intervene. Upon satisfactory evidence of the lessee's future compliance with the applicable laws, and with any other term the commissioner may prescribe, the lease may be reinstated.

(f) Effect of discontinuing the leasehold relationship. When the discontinuance of a leasehold relationship becomes effective, the lessee shall be relieved of all further obligations to the state due to the lessee's ownership of the lease except for the following:

(1) those obligations, liabilities, penalties, or the like owed by the lessee to the state as of the effective date of the release, termination, forfeiture, or assignment;

(2) the duty to pay all royalty owed by lessee in the manner set out in the lease and this chapter on all oil or gas produced under the lease as of the date of the discontinuance of the leasehold relationship;

(3) the accrual of penalty and interest, both in the past and in the future, as set out in this chapter on any delinquent royalty or report owed by the lessee;

(4) the duty to file with the GLO the reports, applications, and other records required by the lease, statutes, and/or this chapter regarding any activity by the lessee or operator relating to the previously leased premises and/or production therefrom. For example, all applications and reports regarding the plugging and abandoning of a well previously covered by a lease must be filed with the GLO as set out in this chapter even though the lease has been released, terminated, forfeited, or assigned.

(5) the following clean-up duties:

(A) the duty to comply with all federal and state laws, particularly RRC and GLO statutes and administrative rules and United States Corps of Engineers regulations relating to plugging and abandoning wells and cleaning the property;

(B) except in the case of assignments, the duty to remove all oil stored on the property and clean any residue remaining on the property unless the GLO agrees in writing to, or requests, an alternative plan. If such is not completed within 120 days of when the discontinuance of the leasehold relationship becomes effective, a presumption shall arise that these items have been abandoned by the lessee and the state shall own such oil.

(C) except in the case of assignments, the duty to remove all equipment, structures, machinery, tools, supplies, and other items on the property and otherwise restore the property to the condition it was in immediately preceding issuance of that lease unless the GLO and any other relevant authority agree in writing to, or

requests, an alternative arrangement. If such is not completed within 120 days of when the discontinuance of the leasehold relationship becomes effective, a presumption shall arise that these items have been abandoned by the lessee or operator and the state shall become the owner of these items;

(D) the duty to remove all fills for roads and drill sites if requested by the commissioner.

(g) Discharge of clean-up duties. Lessee shall not be relieved of any of the duties set out in subsection (f)(5) of this section until a GLO inspection has been made of the relevant area, the inspector reports that these duties have been satisfactorily met, and that report is filed in the appropriate mineral file. Lessee shall be liable for any damages incurred due to lessee's failure to comply with subsection (f) of this section. At the commissioner's discretion, the lessee may be excused from all or part of these duties upon presentation of proof to the commissioner's satisfaction that these duties will be otherwise met.

(h) Other records. At any time, or from time to time, the GLO may require any additional records relating to any aspect of lease operations and accounting.

*§9.9. Pooling State Leases.*

(a) Authorization to operate areas as units. The commissioner may execute pooling or unitization agreements, or ratifications of such agreements, for the production of oil or gas or both covering:

(1) the royalty interests reserved to the state by law, contract, or sale, or under any oil and gas lease legally executed by an official, board, agent, agency, or authority of the state; or

(2) the free royalty interests, whether leased or unleased, reserved to the state.

(b) Procedure. A completed pooling application shall be submitted to the pooling committee. An application form may be obtained upon request. The applicant shall enclose the information, plats, and RRC forms requested in the pooling application or requested by the pooling committee.

(1) The applicant shall submit evidence that the proposed pooling will be in the best interest of the state by providing:

(A) geological and geophysical data; e.g., structural maps, isopach maps, cross-sections, productive limits;

(B) information on wells drilled in the general area of the proposed unit, and current production rates of offset wells;

(C) electrical and/or geophysical logs;

(D) any other data which may be requested.

(2) The applicant shall include all information necessary for proper execution of the pooling agreement including:

(A) evidence of standing to request pooling;

(B) names of all owners of an interest in the leases to be pooled;

(C) names and respective capacities (e.g., president, vice-president, attorney-in-fact, etc.) of the persons authorized by the working interest owners to execute the pooling agreement;

(D) a list of all owners of the soil (Relinquishment Act land) who have not previously authorized pooling and will be executing the pooling agreement; and

(E) a legal description of the area to be pooled and the leases included within the surface boundaries of the pooled area.

(3) The pooling application shall be submitted at least 10 working days prior to the regular meeting of the SLB. The pooling committee meets at times it deems necessary and upon mutual agreement of the applicant and the pooling committee.

(4) A personal appearance before the pooling committee is not required of the applicant or his representative. However, by timely appointment, either may appear and be heard if a personal appearance is desired. The pooling committee may also request the applicant to make an appearance.

(5) The pooling committee shall consist of representatives from the GLO, the Governor's Office, and the Attorney General's Office.

(c) Approval of unit agreements.

(1) SLB approval must be obtained for any agreement which commits:

(A) the royalty interest in land belonging to the PSF or the asylum funds in riverbeds, inland lakes and channels, or in an area within tidewater limits;

(B) the free royalty interests, whether leased or unleased, reserved to the state; or

(C) Relinquishment Act lands.

(2) If the agreement includes land leased for oil and gas under the Relinquishment Act it must be executed by the owner of the soil and approved by the SLB. The owner of the soil will be deemed to have executed the unit agreement if:

(A) the oil and gas lease contains language authorizing pooling consistent with the Texas Natural Resources Code, §§52.151-52.153;

(B) the owner of the soil expressly agrees that the inclusion of such language in the lease satisfies the execution requirement of the Texas Natural Resources Code, §52.152; and

(C) such language is approved by the commissioner.

(d) Agreement provisions. The pooling or unitization agreement may provide:

(1) that drilling, reworking, or other operations on the unitized area with respect to the pooled mineral shall be considered for all purposes as though the same were on each separate tract in the unit;

(2) that production of the pooled mineral allocated to each tract shall be deemed to have been produced from each tract in the unit;

(3) that the agreement and lease, with respect to the interest of the state, shall be effective for a specified term approved by the SLB or as long as oil or gas or both are produced from the pooled unit in paying quantities and royalties are paid to the state;

(4) that royalties reserved to the state on production from any tract or portion of a tract included in the unit shall be paid only on the portion of the production allocated to the tract by the agreement;

(5) the manner in which unit production is to be allocated to each such tract (i.e. surface acres or volumetric calculation);

(6) the effective date and term of the unit; and

(7) any other provision which the SLB considers necessary to protect the state's interests.

(e) Requirement of timely execution.

(1) A pooling agreement approved by the SLB shall be of no force and effect unless it is executed by both the applicant and the commissioner and filed with the GLO within 90 days of approval. However, this 90-day limitation shall not apply to a pooling agreement in which the state's only interest in any of the lands included therein is a free royalty interest.

(2) An applicant may resubmit a pooling application to the pooling committee.

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 June 5, 1989.

TRD-8904961 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5009.

## Chapter 11. Legal Division

### • 31 TAC §§11.11-11.17

*(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 The General Land Office or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The General Land Office proposes the repeal of §§11.11-11.17, concerning oil and gas leases, mineral classified lands. The General Land Office proposes repeal of these sections in order to further its policy of reorganizing administrative rules into a more accessible and logical structure. The subject matter of these sections will be included in new Chapter 9 of this title (relating to Oil and Gas Exploration and Leasing).

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

Mr. Phillips also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased governmental and administrative efficiency due to reorganization of the administrative rules. 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 Jim Phillips, General Counsel, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

The repeals are proposed under the Natural Resources Code, §31.051, which authorizes the commissioner of the General Land Office to make and enforce suitable rules consistent with the law.

*§11.11. Leasing of Mineral Classified Lands.*

*§11.12. Assignments.*

*§11.13. Releases of Oil and Gas Leases.*

*§11.14. Extension of State Fee Leases after Expiration of Primary Term.*

*§11.15. Suspension of Oil and Gas Leases (Except Leases Under the Natural Resources Code, Chapter 52, Subchapter F).*

*§11.16. Division Orders.*

*§11.17. Leasing of Oil and Gas after Forfeiture.*

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 June 5, 1989.

TRD-8904956 Garry Mauro
Commissioner
General Land Office

Earliest possible date of adoption: July 10, 1989

For further information, please call: (512) 463-5009

# Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

## TITLE 25. HEALTH SERVICES

### Part VII. Texas Medical Disclosure Panel

### Chapter 601. Informed Consent

### Medical Treatments and Surgical Procedures Established by the Texas Medical Disclosure Panel

• 25 TAC §601.1

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §601.1, submitted by the Texas Medical Disclosure Panel has been automatically withdrawn, effective June 5, 1989. The amendment as proposed appeared in the December 2, 1988, issue of the *Texas Register* (13 TexReg 5953).

TRD-8904999

Filed: June 5, 1989

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## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

### Chapter 3. Tax Administration

### Subchapter X. Pari-Mutuel Wagering Racing Revenue

• 34 TAC §3.640

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §3.640, submitted by the Comptroller of Public Accounts has been automatically withdrawn, effective June 5, 1989. The amendment as proposed appeared in the December 2, 1988, issue of the *Texas Register* (13 TexReg 5956).

TRD-8904998

Filed: June 5, 1989

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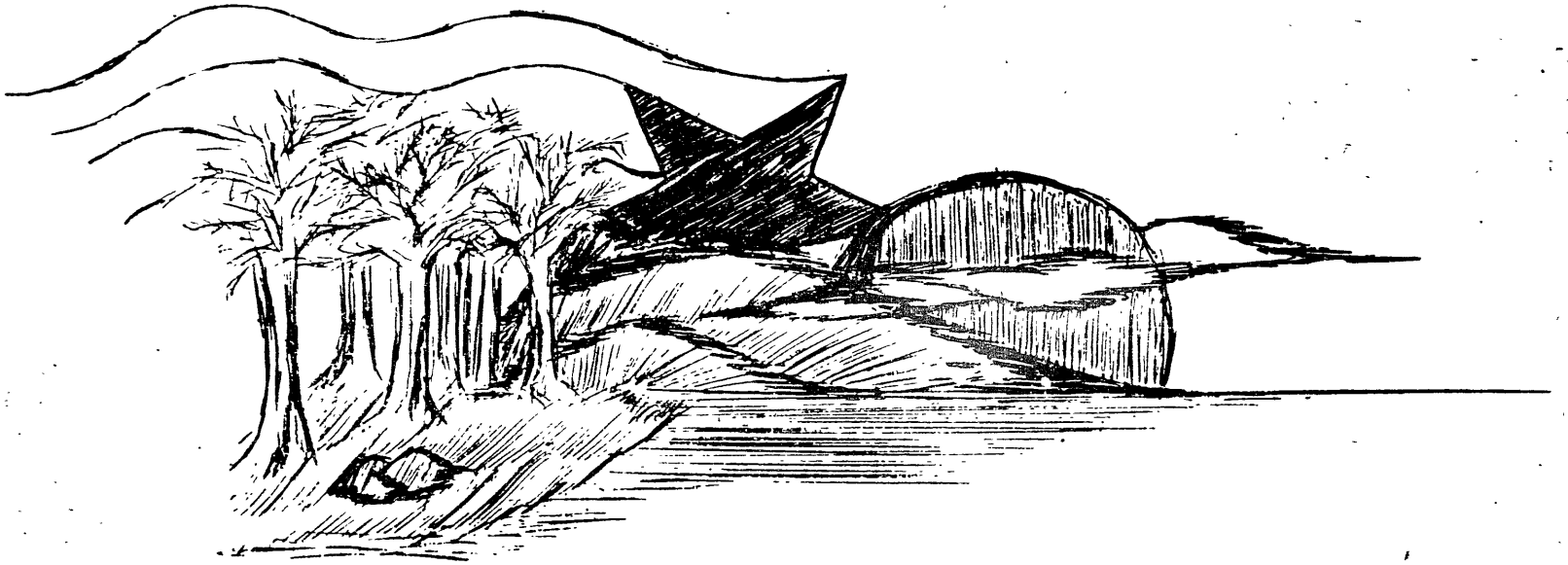

Name: David Barrera

Grade: 10

School: Holmes High, Northside