Texas Register

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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

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Withdrawn Sections–sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code;*

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

Texas Register Publications

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♦ ♦ ♦

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.

Appointment Made August 24, 1989

To be a member of the **Texas Turnpike Authority Board of Directors** for a term to expire February 15, 1995: Philip Montgomery, 4700 Bluffview, Dallas, Texas 75209. Mr. Montgomery will be replacing C. C. Smitherman of Highlands, who resigned.

Issued in Austin, Texas on September 18, 1989.

TRD-8908614 William P. Clements, Jr.
Governor of Texas

♦ ♦ ♦

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 19. EDUCATION

Part II. Texas Education Agency

Chapter 69. Proprietary Schools and Veterans Education

Subchapter E. Guidelines and Minimum Standards for Operation of Texas Proprietary Schools

- **19 TAC §69.128**

The Texas Education Agency adopts on an emergency basis an amendment to §69.128, concerning proprietary school fees. The amendment sets the schedule of fees required of Texas proprietary schools at the level allowed by Senate Bill 417 passed by the 71st Texas Legislature. The level of fees represents an amount that will staff the agency's proprietary school division to the degree necessary to adequately fulfill the responsibilities assigned by the legislature.

The agency finds that imminent peril to the public health and welfare requires the adoption of this amendment on an emergency basis in order to implement the fees and begin hiring of approved additional employees necessary for regulation of proprietary schools as soon as is practical.

The amendment is adopted on an emergency basis under the Texas Education Code, §32.22, which requires the State Board of Education to adopt policies, regulations, and rules necessary for carrying out provisions of the Texas Proprietary School Act after consultation with the Proprietary School Advisory Commission, and §32.71, as amended by the 71st Texas Legislature, which authorizes the State Board of Education to increase proprietary school fees by as much as 50%.

§69.128. Fees.

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

(c) **A late renewal fee of 12% of the renewal fee shall [$100 must] be paid in addition to the annual renewal fee if the school fails to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval. The requirements for a complete application for renewal are found in §69.125 of this title (relating to Certificates of Approval and Permits for Representatives). The complete renewal application must be postmarked with a date on or before the due date.**

(d) Fees shall be set in an amount allowed by law that is estimated to finance agency regulation of the proprietary school industry.

(e) Certificate and registration fees shall be collected by the administrator and deposited with the state treasurer in accordance with the following schedule:

(1) initial fee for a school is $2,550;

(2) the first annual renewal fee is 2,100;

(3) each subsequent annual renewal fee is based on the gross amount of annual student tuition and fees, as follows:

Gross Amount, Student Tuition and Fees				Fee
		not more than $	50,000	825
more than $	50,000	but not more than	100,000	975
more than	100,000	but not more than	250,000	1,125
more than	250,000	but not more than	500,000	1,275
more than	500,000	but not more than	750,000	1,425
more than	750,000	but not more than	1,000,000	1,575
more than	1,000,000			1,725;

(4)	the initial fee for a representative is	90;
(5)	the annual renewal fee for a representative is	45;
(6)	the fee for a change of name or a school owner is	150;
(7)	the fee for the change of address of a school is	270;
(8)	the fee for a change in the name or address of a representative or a change of the name or address of a school that causes the reissuance of a representative permit is	15;
(9)	the application fee for an additional course is except for seminar and workshop courses for which the fee is	225; 35;
(10)	the application fee for a director, administrative staff member, or instructor is	20;
(11)	the application fee for the authority to grant degrees is	3,000;
(12)	the application fee for an additional degree course is	375;
(13)	the fee for an inspection required by rule of the State Board of Education of classroom facilities that are separate from the main campus is	375; and
(14)	the fee for an investigation of a complaint against a school, if the school is at fault, is	600.

Issued in Austin, Texas, on September 18, 1989.

TRD-8911691 W. N. Kirby
Commissioner of Education

Effective date: September 19, 1989

Expiration date: January 17, 1990

For further information, please call: (512) 463-9212

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §97.16

The Texas Department of Health adopts on an emergency basis new §97.16, concerning the Texas HIV Medication Program. The new section implements Senate Bil 959, Article III, 71st Legislature, 1989, concerning the implementation of a HIV medication program in Texas. The new section covers eligibility for participation; priority of participation; application process; confidentiality; payment for azidothymidine; participating pharmacies; and procedure for disputes on funding or eligibility. Also, the new section is being proposed for permanent adoption in this issue of the *Texas Register*.

The department adopts the new section on an emergency basis because the disease of AIDS consitutes an imminent threat to public health and safety. The new section will insure that the drug AZT, and other drugs as they become approved, will continue to be available to AIDS or ARC patients for medication purposes.

The new section is adopted on an emergency basis under Senate Bill 959, Article III, 71st Texas Legislature, 1989, which authorizes the Board of Health to adopt rules concerning a Texas HIV medication program; the Health and Safety Code, §12.001, which provides the Board of Health the authority to adopt rules to implement its statutory duties; and Texas Civil Statutes, Article 6252-13a, §5, which provide the Board of Health with the authority to adopt emergency rules.

§97.16. Texas HIV Medication Program.

(a) Purpose and scope.

(1) Purpose. These sections will implement the provisions of the Texas HIV Medication Program as authorized by Senate Bill 959, Article III, 71st Legislature, 1989. The Texas HIV Medication Program shall assist hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in obtaining azidothymidine (AZT).

(2) Scope. These sections cover eligibility, criteria for financial eligibility, priority, application process, appeal procedures, confidentiality, payment for AZT, and participating pharmacies.

(b) Eligibility. A Texas resident is eligible to participate if he or she:

(1) has AIDS or AIDS-related complexes, i.e., symptomatic infections with human immunodeficiency virus;

(2) is under the care of a licensed physician who prescribes the drug; and

(3) meets the financial eligibility criteria of the program.

(c) Criteria for financial eligibility. A person is financially eligible if he or she:

(1) is not covered for AZT under the Texas Medicaid Program;

(2) does not qualify for any other state or federal program available for financing the purchase of AZT;

(3) is not covered for the drug by any other third-party payer; and

(4) has an income, when combined with the income of any family members living in the same household as the person and related by blood or adoption or is the person's legal spouse, that does not exceed 200% of the most recently published federal poverty income guidelines. The TDH will determine if the person satisfies this criterion from information provided by the person on a form developed by TDH.

(d) Priority. The Texas HIV Medication Program will coordinate with the department's Bureau of Chronically Ill and Disabled Children Services for the provision of HIV medication for all applicants under 18 years of age.

(e) Application process.

(1) An application packet, containing instructions and all necessary forms, may be requested by writing to the Bureau of Licensure and Certification, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, or by telephoning toll-free 1-800-255-1090.

(2) A person applies to participate in the program by submitting completed financial eligibility and medical certification forms to the Bureau of Licensure and Certification, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(f) Appeal procedures.

(1) This subsection establishes the appeal procedures that are available in the event of an eligibility or funding conflict in the program. To initiate the appeal process, a person must notify the department's Bureau of Licensing and Certification that he wants to appeal a program decision concerning either eligibility or funding. The written notice must contain sufficient reasons for believing that an appeal is in order.

(2) A department review panel will hear the appeal. The panel consists of the chief of the Bureau of Licensing and Certification, the director of the Pharmacy Division, and the HIV medication program administrator. The appellant may appear in person to present his views. After hearing all testimony, the panel will issue a written decision which will be final.

(g) Confidentiality. All information in the application is confidential by law and will not be released. No information that could identify an individual applicant will be released except as authorized by law. Within TDH, physical security and administrative controls will be implemented to safeguard the confidentiality of the applications and other means of identifying the individual. Applicants should realize that, in addition to TDH, their physicians and pharmacists will be aware of their diagnosis.

(h) Payment for AZT. Using specifications developed by TDH, the Texas State Purchasing and General Services Commission will enter into contract with a drug wholesaler in accordance with applicable state law and rules. The TDH will pay the contract wholesaler for the AZT dispensed to a person by a participating pharmacy in accordance with the terms of the contract. If a person is withdrawn from the program for any reason, TDH will cease payment as of that date. The TDH will not pay for more than one month's issue of the drug during the month (The TDH, i.e., will not pay to replace any drug lost, stolen, or damaged). If the attending physician prescribes a daily dose of less than 200/mg. every four hours, TDH will only pay for the amount prescribed. The drug may be dispensed only in increments of 100 capsules (i.e., 100, 200, or 300 capsules) or a maximum of 400 capsules per month.

(i) Participating pharmacy. The program will continue using the approved pharmacies serving the federal AZT Drug Reimbursement Program and will approve additional pharmacies if an extreme hardship exists. Persons who have been approved by TDH for HIV medication program financial assistance may be required to pay a $5.00 prescription fee (copayment) to the participating pharmacy for each month's supply of AZT at the time the drug is dispensed.

Issued in Austin, Texas, on September 18, 1989.

TRD-8908622 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: September 18, 1989.

Expiration date: January 16, 1990.

For further information, please call: (512) 458-7500

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Chapter 119. Health Maintenance Organizations

• 25 TAC §119.2, §119.15

The Texas Department of Health adopts on an emergency basis an amendment to §119.2 and new §119.15, concerning health maintenance organizations. The sections cover the certification procedure and fees and assessments. The emergency adoption implements the provisions of House Bill 2179, 71st Legislature, 1989, which amends the Texas Insurance Code, Health Maintenance Organization Act, Article 20A.32. The amendment and new section are being proposed for permanent adoption in this issue of the *Texas Register*.

The new section covers the fee which the department will charge and collect for the review of an original application for a health maintenance organization (HMO) certificate of authority. The new section also covers the expenses which the department will incur for examining the HMO. The amendment to §119.2 covers a disciplinary procedure for an HMO which fails to pay the fee or expenses required in the new §119.15.

The emergency action is necessary for the department to implement House Bill 2179, which requires the Texas Board of Health to adopt rules covering application fees and examination expenses which an HMO will have to pay to the department. Since House Bill 2179 became effective on September 1, 1989, the department is adopting the rules on an emergency basis to meet the statutory deadline as soon as possible.

The amendment and new section are adopted on an emergency basis under the Texas Insurance Code, Health Maintenance Organization Act, Article 20A.32(b), which provides the Board of Health with the authority to adopt rules concerning application fees and examination expenses relating to health maintenance organizations; the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health; and Texas Civil Statutes, Article 6252-13a, §5(d), which provide the Board of Health with the authority to adopt rules on an emergency basis.

§119.2. The Certification Procedure.

(a) (No change.)

(b) Disciplinary action.

(1) The department may request that disciplinary action be considered by the commissioner of insurance in the following instances:

(A) (No change.)

(B) the HMO fails to carry out its plan of correction within the time frame approved by the department; [or]

(C) the HMO fails to provide the department with its annual statement within 30 days of the March 1 deadline each year; or [.]

(D) the HMO fails to pay the fee or examination expenses required by §119.15 of this title (relating to Fees and Assessments).

(2)-(3) (No change.)

§119.15. Fees and Assessments.

(a) Original application.

(1) The department will notify the applicant in writing within 10 working days of receipt from the State Board of Insurance of an original application for a certificate of authority.

(2) The applicant shall pay to the department an application fee in the amount of $850 within 10 working days of the applicant's receipt of the notice.

(3) The department shall not consider the application as offically submitted and complete until the application fee is paid to the department in accordance with this section.

(4) The application fee is inclusive of all normal expenses of the department including application review, survey, travel, and administrative costs. Expenses incurred by the department in excess of $850 shall be assessed against the HMO applicant.

(5) The department shall give written notification to the State Board of Insurance whether the proposed HMO meets the requirements of this chapter within 45 days of receipt of the completed application.

(b) Examination expenses and assessments.

(1) A HMO shall pay to the department the assessments described in this subsection for the examination expenses incurred under the Texas Insurance Code, Health Maintenance Organization Act, Article 20A.17 (concerning to Examinations) and Article 20A. 32(b)(1)(B) (concerning to Fees). Examinations include on-site visits for complaint investigations, amendments to a certificate of authority which affect quality of health care services including service area expansion, and quality of care surveys under §119.2 of this title (relating to The Certification Procedure).

(2) The HMO will pay the actual salaries and expenses of the examiners allocable to the examinations. The HMO will be assessed that part of the annual salary attributable to each working day or portion thereof that the examiner is on-site or traveling to or from the HMO's premises. The cost allocable for expenses shall be those actually incurred by the examiner for transportation, meals, lodging, and out-of-pocket expenses for the examination to the extent permitted by law and other expenses incurred by the department for the examination.

(3) The administrative expenses directly attributable to the specific examination shall be paid with the expenses described in paragraph (2) of this subsection.

(4) The examination expenses and assessments for a foreign HMO and a domestic HMO shall be calculated in the same manner.

(5) The department shall give written notice to the HMO examined of the amount due after completion of an examination. The HMO shall pay the amount within 30 days of receipt of the notice.

(c) Payment of fees.

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

(2) All fees and assessments received by the department are non- refundable.

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TRD-8908618

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

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Expiration date: January 16, 1990.

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

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roposed 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 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 176. Enterprise Zone Program

• 10 TAC §§176.1-176.10

The Texas Department of Commerce (department) proposes amendments to 176. 1-176.9 and new 176.10, concerning the Texas Enterprise Zone Program. The amendments cover requirements adopted by the 71st Legislature in Senate Bill 1205, Senate Bill 1159, and House Bill 1953. Amendments also cover clarification of requirements and procedures for submission of applications and the disposition of those applications by the department pursuant to Texas Civil Statutes, Article 5190.7.

Gary King, director of finance, has determined that there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the sections.

Mr. King also has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing these sections as proposed in the continuation of the full benefits and incentives offered through the Texas Enterprise Zone Program. In addition, applications will be considered in a more timely manner. 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 Bruce Anderson, General Counsel, Texas Department of Commerce, P. 0. Box 12728, Austin, Texas 78711 within 30 days after the date of this publication.

The amendments and new section are proposed under Texas Civil Statutes, Article 5190.7, which provide the Texas Department of Commerce with the authority to adopt rules for the administration and implementation of the Texas Enterprise Zone Program.

§176.1. General Provisions.

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

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

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

(8) Depressed area–An area within the jurisdiction of a county or municipality designated by ordinance or resolution that is an area with pervasive poverty, unemployment, and economic distress. An area is an area of pervasive poverty, unemployment, and economic distress if:

(A) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period **or if the area has had at least a 9.0% population loss during the most recent six-year period or an annualized population loss of at least 1.5% for the most recent six-year period;** and

(B) the area meets one or more of the following criteria:

(i) (No change.)

(ii) the area is in a jurisdiction or pocket of [or] poverty eligible for urban development action grants under federal law;

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

(9) Economically disadvantaged individual–An individual who for at least **six months** [the entire year] before obtaining employment with a qualified business:

(A) was unemployed; [or]

(B) received public assistance benefits, such as welfare payments and food stamp payments, based on need and intended to alleviate poverty. An individual is unemployed if the individual is not employed and has exhausted all unemployment benefits, whether or not the individual is actively seeking employment; or [.]

(C) was an economically disadvantaged individual, as defined by the Job Training Partnership Act, §4(8), (29 United States Code, §1503(8)).

(10)-(12) (No change.)

(13) Extraterritorial jurisdiction–Territory in the extraterritorial jurisdiction of a municipality that is considered to be in the jurisdiction of the municipality. **Except in a county with a population of 750,000 or more, according to the most recent federal census, the governing body of a county may not nominate territory in a municipality or in the extraterritorial jurisdiction of a municipality to be included in an enterprise zone unless the governing body of the municipality also nominates the territory pursuant to a joint application made with the county.**

(14)-(16) (No change.)

(17) New Job–A new employment position [newly] created by a qualified business that **has provided** [provides] employment to a qualified employee of at least **1,040** [1,080] hours annually.

(18) Qualified business–A person, including a corporation or other entity that the department certifies to have met the following criteria:

(A) the person is engaged in **or has provided substantial commitment to initiate** the active conduct of a trade or business in the zone;

(B) at least 25% of the business's employees in the zone are residents of **any zone within the governing body's or bodies' jurisdiction** [the zone] or economically disadvantaged individuals; and

(C) if a business that is already active within the enterprise zone at the time it is designated and that operates continuously after that time, the business **has hired residents of any enterprise zone within the governing body's or bodies' jurisdiction** [the zone] or economically disadvantaged workers after the **91st day preceding the date the enterprise project is designated** [designation] so that those individuals constitute at least 25% of the business's new or additional employees in the zone.

(19)-(21) (No change.)

(d)-(g) (No change.)

§176.2. Filing Requirements for Applications.

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

(d) Staff consideration of applica-

tions. The staff shall review the application to determine if the application meets the eligibility criteria under the Act and this chapter. Following staff review, the application will be submitted to the executive director or the board, as applicable, for consideration.

(1) Not later than 15 [10] business days after the receipt of the application for enterprise zone designation, the department shall notify the applicant that it has received the application and note any omissions or clerical errors that exist in the application. The applicant has at least two weeks after the date it receives notice of application omissions or clerical errors or 45 days from the date the application is received by the department to correct any deficiencies and to submit corrections to the application to the department.

(2) Not later than five business days after the deadline for accepting applications for enterprise project designation, the department shall notify the applicant that it has received the application. A preliminary review of an enterprise project application will be conducted to determine eligibility and completeness if the application is received at least 15 [10] business days prior to the application deadline. If a preliminary review is conducted of an enterprise project application by the department, the enterprise project applicant or applicants will be notified of application omissions or clerical errors at least seven business days before the application deadline and application deficiencies must be corrected and returned to the department by the enterprise project deadline for consideration.

(e) Consideration of enterprise zone and enterprise project applications.

(1) Complete or corrected applications for enterprise zone designation that staff determines to meet the eligibility criteria set forth in the Act and this chapter will be considered by the executive director. The executive director may approve the application or remand it to the applicant for further action. If the executive director approves the application for enterprise zone designation, a negotiated agreement to designate the enterprise zone will be initiated by the department and must be fully executed no later than the 90th day after the day of receipt of the application. If the agreement is not executed before the 90th day after the day of the receipt of the application by the department, the application is considered to be denied. The department shall inform the governing body or bodies of the specific reasons for the denial.

(2) The board shall meet to review the enterprise project applications that have qualified for consideration by the board following staff review. At the meeting, the board will either approve the application, disapprove it, remand it to the applicant for further action, or make such other disposition of the application as may be appropriate. Enterprise project designation becomes effective immediately upon board approval of an enterprise project application and board action to grant the designation.

§176.3. Eligibility Requirements for Designation of an Enterprise Zone.

(a) An applicant may make written application to the department for designation of an area within the applicant's jurisdiction as an enterprise zone if such area meets the following eligibility criteria:

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

(3) the area is an area with pervasive poverty, unemployment, and economic distress which meets the following criteria:

(A) the average unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state, or national average for that period or if the area has had at least a 9.0% population loss during the most recent six-year period or an annualized population loss of at least 1.5% for the most recent six-year period; and

(B) the area meets one or more of the following criteria:

(i) (No change.)

(ii) the area is in a jurisdiction or pocket of poverty and is certified by the United States Department of Housing and Urban Development as eligible at the time of enterprise zone or enterprise project application for urban development action grants under federal law;

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

(b) (No change.)

(c) Documentation. For the purpose of showing that an area is qualified to be designated as an enterprise zone, the applicant must submit documentation, including the source, methodology, and certification of the data by the person or persons responsible for its preparation. The applicant may, subject to the prior approval of the department, submit data, analysis, or other information which is generated logically by the applicant or on behalf of the applicant. The department will consider current any documentation, if at the time an application is received by the department, such documentation was the most current data that was available not more than 90 days preceding the date the application was received by the department.

(1) Unemployment data. The average rate of unemployment for the area nominated during the most recent 12-month period for which data is available from the Texas Employment Commission must be at least one and one-half times the local, state, or national average for that period. Computation of the average unemployment rate for the proposed enterprise zone area will require choosing the smallest area that contains the zone for which unemployment data is available.

(2) Loss of population. Loss of population may be calculated using population estimates for the applicant's jurisdiction produced by the Texas State Data Center or by other methods approved by the department. The total loss of population is the accumulated population loss experienced during the most recent six-year period for which data is available. The annualized population loss is the average annual loss of population experienced during the most recent six-year period for which data is available.

(3) [(2)] Income data. If a proposed zone includes portions of more than one city or county, the median income should be calculated using figures for each city or county which includes part of the zone. In order to meet the low-income criteria, the smallest number of census tracts or enumeration districts that entirely contain the zone must reflect that at least 70% of the households in that zone have below 80% of the median household income for the locality or state, whichever is lower. To determine a low-income poverty area, at least 20% of the residents of the zone must have an income below the national poverty level as determined by the most recent available census data that contains the zone area. Census tracts or other comparable areas may be used to show poverty rates.

(4)[(3)] Chronic abandonment or demolition. To qualify, the applicant must demonstrate to the department that 25% or more of the structures in such area are found by the governing body to constitute substandard, slum, deteriorated, or deteriorating structures as defined by local law. If local law does not define what constitutes a substandard, slum, deteriorated, or deteriorating structure, the governing body of the applicant may consider as substandard a structure which:

(A)-(F) (No change.)

(5)[(4)] Substantial tax arrearages. The applicant must certify and submit evidence that within the proposed zone area, commercial or residential tax arrearages are at least 25% higher than tax arrearages for the jurisdiction as a whole and that such tax arrearages have been delinquent for at least one year. For purposes of determining substantial tax arrearages, the tax rolls of the applicable city county nominating an area as an enterprise zone must be used. [,provided tax arrearages for the jurisdiction is at least 15%.]

(d) Citizen participation. The department will not approve the designation of an area as an enterprise zone unless:

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

§176.4. Application Contents for Designation of Enterprise Zones.

(a) Each application for designation of an enterprise zone must contain the following information and documentation, as applicable, and numerically tabbed in the order listed below. If a certain tab is not applicable, please state.

(1) The participants. The application must list the name, street, mailing address, and telephone number of each of the following:

(A) (No change.)

(B) the applicant governing body's or bodies' designated liaison to communicate and negotiate with the department, the administrative authority, if any, an enterprise project, and other entities in or affected by an enterprise zone.

(C)[B] if any, the administrative authority, the administrative authority's representative; and

(D)[C] if any, the neighborhood enterprise association, neighborhood enterprise association's representative.

(2) The applicant. If a joint application is being submitted by a municipality, county, or combination of municipalities or counties, the information must be provided for each entity. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the applicant certifying that the contents of the application are true and correct to the best information and belief of the applicant and that the applicant has read the Act and this chapter and is familiar with the provisions of the enterprise zone program [the name, street address, mailing address, and telephone number of the applicant governing body];

(B) a certified copy of the ordinance [resolution] of the governing body of the applicant nominating the area within it jurisdiction as an enterprise zone under the Act, containing the information set forth in the Act, §6, and designating a liaison in accordance with subsection (a)(1)(B) of this section. The ordinance [resolution] may include nomination of more than one zone area within the limits of the Act and within the jurisdiction of the applicant governing body to be filed with separate zone applications; and;

(C) if [this is] a joint application, a description and certified copy of the agreements between joint applicants providing for the joint administration of the zone.[; and]

[(D) A certificate signed by the applicant to the effect that the contents of the application are true and correct to the best information and belief of the applicant and the applicant has read the Act and these sections and is familiar with the provisions of the program.]

(3) Zone Administration. The application must contain the following information and documentation concerning administration of the zone:

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

(C) a description of the administrative authority, if any, including a list of members with representation as set forth in the Act, §22, street, mailing address, and telephone number of each member; and

(D) a description of the functions and duties of the administrator or administrative authority, if any, including decision-making authority and the authority to negotiate with affected entities.

(4) (No change.)

(5) The zone. The application must contain the following information and documentation concerning the proposed zone:

(A) a map of the proposed enterprise zone location which clearly shows zone boundaries, including existing streets and highways, rail, and air facilities;

(B) an official [a] map census map of the proposed enterprise zone area that clearly identifies and reflects the census data areas within the proposed zone boundaries applicable to the eligibility criteria referenced in the application;

(C) certification of the total square miles of each applicant's jurisdiction. the total square miles inside its city limits, and inside its extraterritorial jurisdiction or. if a joint application, outside its jurisdiction in the county and the respective total square miles in the proposed enterprise zone [certification of the total square miles of each applicant's jurisdiction and the total square miles of the proposed enterprise zone area located within each applicant's jurisdiction];

(D)-(E) (No change.)

(F) an annualized seven-year estimate of the economic impact of the zone[,] that reflects at least the number of jobs and capital investment expected as a result of the designation of the zone, considering all of the tax incentives, financial benefits, and programs contemplated, on the revenues of the municipality or county.[; and] The estimate must be provided in tabular form and describe the basis and assumptions used.

[(G) in the case of a joint application, a statement detailing the need for a zone covering portions of more than one municipality or county.]

(6) The local business incentives. For the purposes of tax abatement under the Property Redevelopment and Tax Abatement Act (the Tax Code,) Chapter 312), an enterprise zone designated after August 28, 1989, is considered to be a reinvestment zone without further designation. The application must contain the following information and documentation concerning any incentives to be provided by the local government:

(A) a statement detailing any tax, or other incentives to be provided in the zone, as described in the [resolution] ordinance nominating the area as an enterprise zone; and

(B) a statement detailing any incentives or benefits and any programs to be provided by the municipality or county to business enterprises in the zone, other than those provided in the designating [resolution] ordinance, that are not to be provided throughout the municipality or county.

(7) Public hearings. The application must contain a transcript or tape recording of all public hearings on the zone, including copies of the published notices and copies of the publisher's affidavits.

(b) (No change.)

§176.5. Requirements for Designation of Enterprise Projects.

[(a)] The department may not designate a nominated qualified business an enterprise project unless it determines that:

(1) the business meets the requirements set forth in the Act, §3(a)(10)[(9)], and this chapter;

(2) the qualified business is located in an enterprise zone having an unemployment rate at the time of enterprise zone designation or enterprise project application, whichever is the higher, of not less than one and one-half times the

average state unemployment rate or a population loss of at least 12% during the most recent six-year period or an annualized population loss of at least 2.0% for the most recent six-year period at the time of project application.

(3)-(5) (No change.)

[(b) The department will not designate a qualified business as an enterprise project if in the enterprise zone there are two enterprise projects that were designated during the current fiscal year.]

§176.6. Application Contents for Designation of an Enterprise Project. The application for designation of an enterprise project must contain the following information and documentation, as [if] applicable. If a joint application is being filed by one or more municipalities or counties, the information must be included for each applicant governing body.

(1) The participants. The application must contain the name, street, mailing address, and telephone number for each of the following involved in the designation of qualified businesses as enterprise projects:

(A) the applicant governing body, applicant governing body's representative, and its designated enterprise zone liaison;

(B)-(D) (No change.)

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) a statement signed by the qualified business certifying that the contents of the application are true and correct to the best information and belief of the qualified business and that the qualified business has read the Act and this chapter and is familiar with the provisions thereof [a description of the applicant, including the name, street, mailing address, and telephone number of the applicant governing body];

(B) (No change.)

(C) a complete description of the conditions in the zone [at the time of project application] that constitute pervasive poverty, unemployment, and economic distress for purposes of the Act, §4(b);

(D)-(E) (No change.)

(F) a certificate signed by the qualified business to the effect that the contents of the application are true and correct to the best information and belief of the qualified business and the qualified business has read the Act and this chapter and is familiar with the provisions thereof.]

(3) The project. The application must contain the following information and documentation concerning the proposed project. Any analysis or breakdown, where applicable, should show benefits to economically disadvantaged individuals:

(A) (No change.)

(B) an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity in the zone for at least the first two years of the project, including:

(i) the anticipated number of new jobs it will create, including a statement indicating the number of full-time employees working for the business and the number of new or additional [those] employees that the qualified business commits to hire and the percentage of new or additional employees expected to be residents of any zone within the governing body's or bodies' jurisdiction or [residing in the zone or the number of] employees that are economically disadvantaged individuals;

(ii)-(iii) (No change.)

(iv) estimated total annual payroll of new or retained jobs and new jobs by job types or classifications;

(v)-(vii) (No change.)

[(C) an analysis of the social impact that the designation of the qualified business as an enterprise project would have on the zone.]

(C)[(D)] documentation for project viability including:

(i) -(ii) (No change.)

(4) The zone. The application must contain the following information concerning the zone:

(A) an analysis and any supporting documents demonstrating that the project is located in a zone with an unemployment rate of not less than one and one-half times the average state unemployment rate or a population loss of at least 12% during the most recent six-year period or an annualized population loss of at least 2.0% for the most recent six-year period at the time the enterprise project application is submitted to the department;

(B) a brief historical description of the trade or business conducted in the zone and its function or, if a qualified business making substantial commitment to locate in a zone, a brief historical description of its business in other locations with respect to its location in the zone and its functions; and

(C) a description which includes the types of projects that have been completed within the last year of designation of the zone or within the last year prior to designation of the zone, if the zone has been designated for less than one year, demonstrating the cooperation among the public and private sectors; and information on the number of jobs created and revenue generated as a result of the projects.

§176.7. Certification of Neighborhood Enterprise Associations.

(a) Individuals residing in an enterprise zone may establish, under the Act, §21, a neighborhood enterprise association. Following organization of the association, its board of directors must apply to the governing body for certification as a neighborhood enterprise association. [After granting its certification, the governing body shall forward the application to the department for the department's final certification.]

(b) The application for certification of a neighborhood enterprise association must include the following:

(1) a certified statement signed by chief executive officer of the association which contains the following information:

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

(E) that the incorporators have published in a newspaper of general circulation in the municipality or county an explanation of the proposed new association and their rights in it and that a copy of the association's articles of incorporation and bylaws are available for public inspection at the office of the city manager or comparable municipal officer or at the county judge's office, as applicable [that all registered voters of the association's neighborhood area were sent by the same means as for the service of process]:

(i)-(ii) (No change.)

(2)-(5) (No change.)

(c) [Neighborhood enterprise association project approval. The department does not require prior approval for those types of projects enumerated in the Act.] The neighborhood enterprise association may implement projects, other than those enumerated in the Act, by submitting an application to the governing body [and the department] for approval of the specific project or activity. Applications submitted for approval to the governing body [department] must describe the nature and benefit of the project, including:

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

§176.8. Approval Standards.

(a) (No change.)

(b) Approval standards for designation of enterprise projects. The department shall designate qualified businesses as enterprise projects on a competitive basis. Applications for designation of enterprise projects will be accepted on a bi-monthly basis during the following application deadlines.

(1) For the fiscal year ending August 31, 1990 [1989], the application deadlines are September 14, 1989, November 1, 1989, January 2, 1990, March 1, 1990, May 1, 1990, and July 2, 1990. [September 22, 1988, November 7, 1988, January 9, 1989, March 6, 1989, May 9, 1989, and July 10, 1989.] Up to five [two] projects may be designated during each application period with the remaining eligible [allowable] projects to be designated during subsequent application periods. [Three] Additional [additional] allowable projects carried forward from prior fiscal years may be designated during any application period. The deadlines for fiscal year 1991 [1990 and subsequent fiscal years] will be published in the *Texas Register* at least 60 days in advance of such deadlines. No enterprise projects may be designated after August 31, 1991.

(2) The department will not designate a qualified business as an enterprise project if there were two enterprise projects designated during the current fiscal year in the enterprise zone in which the business is located.

(3)[(2)] In determining which qualified businesses will be designated enterprise projects, based on relative factors as determined by the department, the department shall base its decision on a weighted scale with 60% dependent on the economic distress of the enterprise zone in which a proposed project is located and 40% dependent on the local effort to achieve development and revitalization of the enterprise zone.

(A) Economic distress. This evaluation is designed to measure the level of documented economic distress as indicated by such things as high levels of poverty, unemployment, job and population loss, and general distress. In addition, the evaluation criteria is designed to assess the overall potential impact that the project is likely to have on the distress factors identified within the zone, as well as the impact within the applicant's jurisdiction at large.

(B) Local effort. This evaluation criteria is designed to measure the level of local support on the part of a public entity and a private entity and includes, but is not limited to, such factors as set forth in the Act, §10(h)-(j).

(c) Period for which designation is in effect.

(1) An area may be designated as an enterprise zone for a maximum period of seven years. However, if an area is designated as a federal enterprise zone, the area may be designated for a longer period not to exceed that permitted by federal law. Any designation of an area as an enterprise zone shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) September 1 of the 7th calendar year following the calendar year in which such date occurs, or in the case of federal enterprise zone designation, the date federal designation period ends; or

(B) (No change.)

(2) (No change.)

(d) Approval standards for certification of neighborhood enterprise associations. Such standards will be determined and final certification may be granted by local governing body or bodies as applicable in accordance with the Act, §21. [The department will review applicants submitted as certified by local governing units and may grant final certification as set forth in the Act, §21.]

§176.9. Reporting Requirements.

(a) Annual reports.

(1) Each municipality, county, or combination of municipalities or counties that authorized the creation of an enterprise zone shall submit an annual report to the department on or before October [March] 1 of each year. The report must be in a form prescribed by the department and contain the information listed in the Act, §23. If such report is not received by the deadline, the department may, following a public hearing, consider termination of the designation of the enterprise zone.

(b) Other reports, or documents. The applicant shall furnish additional information, reports or statements as the department may from time to time request in connection with the Act and this chapter.

§176.10. Boundary amendments.

(a) If an enterprise zone has been lawfully designated, the original nominating governing body or bodies, by resolution or ordinance adopted following a public hearing. may amend the original boundaries subject to the following limitations.

(1) The boundaries as amended must not exceed the original size limitations and boundary requirements set by the Act and may not exclude any part of the zone within the boundaries as originally designated.

(2) The enterprise zone must continue to meet all unemployment and economic distress criteria throughout the zone as required by the Act.

(3) The governing body or bodies may not make more than one boundary amendment annually during the life of the zone.

(b) The governing body or bodies must provide certifications and evidence of public hearings and notices with respect to the boundary changes in the same form as required in the original application for enterprise zone designation. No area may be added to the proposed enterprise zone after a public hearing unless that area is first held out to the public in a subsequent public hearing for inclusion into the enterprise zone.

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, September 18, 1989.

TRD-8908713 William Taylor
Executive Director
Texas Department of Commerce

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 472-5059

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

- **16 TAC §§3.27, 3.28, 3.30, 3.31, 3.34**

The Railroad Commission of Texas proposes amendments to §§3.27, 3.28, 3. 30, 3.31, and 3.34, concerning gas to be measured, potential of gas wells to be ascertained and reported, gas nominations, gas well allowables, and gas to be produced and purchased ratably. The Railroad Commission takes no position on the merits of these proposed amendments. The existing language in 16 TAC §3.27 was adopted by the Railroad Commission on February 10, 1965, and published in the October 22, 1965, issue of the *Texas Register* (10 TexReg 4113); §3.28 and §3.31 were adopted by the Railroad Commission on August 11, 1986, and published in the August 19, 1986, issue of the *Texas Register* (11 TexReg 3680); §3.30 was adopted by the Railroad Commission on February 9, 1987, and published in the February 17, 1987, issue

of the *Texas Register* (12 TexReg 536); and §3.34 was adopted by the Railroad Commission on February 1, 1988, and published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 838).

Rita E. Percival, systems analyst, Oil and Gas Division, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government and small businesses as a result of enforcing or administering the sections. The effect on state government for the first five-year period the amendments to §§3.27, 3.28, 3.30, 3.31, and 3.34 are in effect is an estimated additional cost of $178,582 for fiscal year 1990; additional costs of $104,295 per year are anticipated for fiscal years 1991-1994. The cost of compliance with the sections for small businesses as a result of enforcing or administering the amendments to §§3.27, 3.28, 3.30, 3.31, and 3. 34 will be an estimated $5,190,960 per year for fiscal years 1990-1994. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Peggy S. Gray, hearings examiner, Legal Division, has determined 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 understanding of the sections; clarification of ratable production, elimination of nominations except for prorated gas wells; greater prevention of waste of oil and gas; better protection of correlative rights; and increased prevention of discrimination in the production and purchasing of natural gas. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the entire text of the proposals may be submitted to Ms. Gray, Oil and Gas Section, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. The docket number for this proposal is 20-93, 165. All comments must be submitted by 5 p.m. on November 27, 1989.

The amendments are proposed under the Texas Natural Resources Code, §§81. 052, 85.046, 85.202, 86.012, 86.041, 86.042, 86.081, 111.083, 111.090, and 111. 133, which provides the Railroad Commission of Texas with the authority to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent waste of oil and gas in drilling and producing operations; to effectuate the provisions and purposes of the Natural Resources Code, Chapter 86; to conserve and prevent waste of gas; to prevent discrimination in the production and purchasing of gas; to prevent monopolistic practices which may be injurious to the general public; and to regulate common purchasers of gas to achieve the prior purposes.

§3.27. Rule 27. Gas to be Measured.

(a) **Gas reservoirs.** All natural gas produced from wells completed in gas reservoirs shall be accounted for by measurement before the same leaves the lease, each completion to be metered separately, and the operator [producer] shall report to the commission for each lease:

(1) the volume produced;

(2) the volumes sold from each completion; and

(3) the gas gatherer, first purchaser, nominator, and the pipeline system moving gas from each completion [to the commission]. [Exceptions to this provision may be granted by the commission upon receipt of written application.]

(b) **Gas wells in oil and gas reservoirs.** All natural gas produced from wells completed in an oil reservoir but not listed on the oil proration schedule shall be accounted for by measurement before the same leaves the lease, each completion to be metered separately, and the operator [producer] shall report to the commission for each lease:

(1) the volume produced;

(2) the volumes sold from each completion; and

(3) the gas gatherer, first purchaser, nominator, and the pipeline system moving gas from each completion [to the commission].

(c) **Casinghead gas sold or processed.** All casinghead gas produced from oil wells and sold, processed for its gasoline content, used in a field other than that in which it is produced, or used in cycling or repressuring operations, shall be accounted for by measurement before the same leaves the lease, and the operator [producer] shall report to the commission for each lease:

(1) the volume produced;

(2) the volumes sold from each lease; and

(3) the gas gatherer, first purchaser, nominator, and/or pipeline system moving gas from the lease [to the commission]. [Exceptions to this provision may be granted by the commission upon receipt of written application.]

(d) **Other casinghead gas.**

(1) All casinghead gas produced from oil wells in this state which is not covered by the provisions of subsection (c) of this section, shall be accounted for by measurement or by an accurate estimate before the same leaves the lease, based on its use or on its periodic test, and reported to the commission by the operator [producer]. The operator shall report to the commission for each lease:

(A) the volume produced;

(B) the volumes sold from each lease; and

(C) the gas gatherer, first purchaser, nominator, and/or pipeline system moving gas from the lease.

(2) The volume of gas produced by wells exempt from gas/oil ratio surveys must be estimated, based on general knowledge of the characteristics of the wells without the use of periodic test data. It is [further provided that it shall] not [be] necessary for an operator [a producer] to report any casinghead gas produced from a marginal well that is exempt from gas/oil ratio survey, if such gas is not sold or utilized off the lease. Exceptions to the provisions contained in subsections (a), (b),(c), and (d) of this section [this provision] may be granted by the commission upon receipt of written application.

(e) **Reporting all gas produced.** In reporting gas well production the full-well stream gas should be reported and charged against each gas well for allowable purposes. All gas produced must be reported regardless of its disposition, including gas used on the lease for heaters, any other type of lease use, and [or] gas vented from low pressure separators.

(f) **Offshore wells.** If gas is produced from a lease or other property covered by the coastal or inland waters of the state, the gas produced may, at the option of the operator, be measured onshore [on a shore] or at a point removed from the lease or other property from which it was produced.

(g) **Geothermal reservoirs.** All natural hydrocarbon gas produced utilized from wells completed in geothermal resource reservoirs shall be accounted for by measurement and allocated to each individual lease based on semiannual tests [test] conducted on full well stream lease production.

(h) **"Measurement" definition.** For purposes of this rule "measurement" shall mean determination of gas volumes in accordance with this rule and other rules of the commission.

(i) **Metering requirements.** No meter or meter run used for measuring gas as required by this rule shall be equipped with a manifold which will allow gas flow to be diverted or bypassed around the metering element in any manner unless it is of the type listed in paragraphs (1) or (2) of this subsection:

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

(j) **Seals.** Whenever sealing procedures are used to provide security in the meter inspection manifold systems, the seal records shall be maintained for at least three years at an appropriate office and made available for Railroad Commission inspection during normal working hours. At any time a seal is broken or replaced, a notation will be made on the orifice meter chart along with graphic representation of estimated gas flow during the time the meter is out of service.

(k) **Gas meters.** All gas meters used for measuring gas as required by this

rule must be equipped so as to comply with one of the accepted methods set out in subsection (i) of this section by October 1, 1983. Exceptions may be granted by the director of the Oil and Gas Division upon showing of good cause.

(l) **Sales meters.** All meter requirements apply to all meters which are used to measure lease production, including sales meters if sales meter volumes are allocated back to individual leases.

(m) **Enforcement.** Failure to comply with the provisions of this rule will result in severance of the producing well, lease, facility or gas pipeline or in other enforcement proceedings, depending upon the nature of the violation and the party at fault.

§3.28. Rule 28. Potential and Deliverability of Gas Wells to be Ascertained and Reported. [Rule 28.]

(a) **Potential tests required.** The absolute daily open flow potential of each producing associated or non-associated gas well shall be ascertained, and a report shall be filed as required on the appropriate commission form in the appropriate commission office within 30 days of completion of the well. The test shall be performed in accordance with the commission's publication, "Back Pressure Test for Natural Gas Wells, State of Texas," or other test procedure approved in advance by the commission and shall be reported on the commission's prescribed form. An operator, at his option, may determine absolute open flow potential from a stabilized one-point test. For a one-point test, the well shall be flowed on a single choke setting until a stabilized flow is achieved, but not less than 72 hours. The shut-in and flowing bottom hole pressures shall be calculated in the manner prescribed for a four-point test. A back pressure curve to determine a calculated absolute open flow shall be drawn at an angle of 45 degrees through the point representing this rate of flow when plotted in the manner specified for a four-point test. The commission may authorize a one-point test of shorter duration for a well which is not connected to a sales line, but a test which is in compliance with this section must be conducted and reported after the well is connected before an allowable will be assigned to the well. Back-dating of allowables will be performed in accordance with §3.31 of this title (relating to Gas Well Allowables).

(b) **Deliverability tests required.**

(1) After conducting the test required by subsection (a) of this section, each operator of a gas well shall conduct an initial deliverability test not later than 10 days after the start of production for one or more legal purposes and shall report such initial deliverability test on the prescribed form. If a 72-hour one-point back pressure test on a well connected to a sales line was conducted as provided in subsection (a) of this section, the same test may be used to determine initial deliverability, provided the test was conducted in accordance with subsection (c) of this section. After the initial deliverability test has been conducted, the following schedule for well testing applies. Non-associated gas wells shall be tested semiannually. Associated 49(b) gas well shall be tested annually. Wells with current reported deliverability of 100 mcf a day or less are not required to test as long as deliverability and production remain at or below 100 mcf a day but are required to file Form G-10 according to the instructions on the form. Wells operating under special field rules which conflict with this subsection shall test in accordance with the special field rules. Notwithstanding the previously stated provisions on frequency of testing, gas wells commingling liquid hydrocarbons before metering must comply with the testing provisions applicable to such wells.

(2) All deliverability tests shall be conducted in accordance with subsection (c) of this section and the instructions printed on Form G-10. The results of each test shall be attested to by the operator or his appointed agent. Any [The] first purchaser of gas from the well or its representative upon request to the operator shall have the right to witness such tests. Gas meter charts, printouts, or other documents showing the actual measurement of the gas produced or other data required to be recorded during any deliverability test conducted under this subsection shall be preserved as required by —3.1 of this title (relating to Organization Name to be Filed and Records to be Kept) (Statewide Rule 1). In the event that a [the] first purchaser and the operator cannot agree upon the validity of the test results, then either party may request a retest of the well. Any [The] first purchaser upon request to the operator shall have the right to witness the retest. If either party requests a representative from the commission to witness a retest of the well, the results of a commission-witnessed test shall be conclusive for the purposes of this section until the next regularly scheduled test of the well. In the event a retest is witnessed by the commission, the retest shall be signed by the representative of the commission. In the event that downhole remedial work or other substantial production enhancement work is performed, or if a pumping unit, compressor, or other equipment is installed to increase deliverability of a well subject to the commission-witnessed testing procedure described in this subsection, a new test may be requested and shall be performed according to the procedure outlined in this subsection.

(c) **Test procedures.** Unless applicable special field rules provide otherwise or the director of the Oil and Gas Division or the director's delegate authorizes an alternate procedure due to a well's producing characteristics, deliverability tests shall be performed as follows. Deliverability tests shall be scheduled by the operator [producer] within the testing period designated by the Railroad Commission, and only the recorded data specified by the Form G-10 is required to be reported. All deliverability test shall be performed by producing the subject well at stabilized rates for a minimum time period of 72 hours. A deliverability test shall be conducted under normal and usual operating conditions using the normal and usual operating equipment in place on the well being tested, and the well shall be produced against the normal and usual line pressure prevailing in the line into which the well produces. The average daily producing rate for each 24-hour period, the wellhead pressure before the commencement of the 72-hour test, and the flowing wellhead pressure at the beginning of each 24-hour period shall be recorded. In addition, a 24-hour shut-in wellhead pressure shall be determined either before or after the flow test and recorded. The flow rate during each day of the first 48 hours of the test must be as close as possible to the flow rate during the final 24 hours of the test, but must equal at least 75% of such flow rate. The deliverability of the well during the last 24 hours of the flow test shall be used for allowable and allocation purposes. If pipeline conditions exist such that an operator [a producer] believes a representative deliverability test cannot be performed, the operator [producer] with pipeline notification, may request in writing that the commission use either of the following as a representative deliverability:

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

(d) **Changes in deliverability.** If the deliverability of a well changes after a test is reported to the commission, the deliverability of record for a well will be decreased upon receipt of a written request from the operator to reduce the deliverability of record to a specified amount. If the deliverability of a well increases, a retest must be conducted in the manner specified in this section and must be reported on Form G-10 before the deliverability of record will be increased.

(e) **Downstream purchases.** First purchasers with packages of gas dedicated entirely to a downstream purchaser shall coordinate testing wich and provide test results to that downstream purchaser if requested by the downstream purchaser. In these cases, the downstream purchaser upon request to the operator shall have the right to witness all deliverability tests and retests.

(f) **District office notification.** The appropriate district office shall be notified at least 24 hours prior to any test. Tests of wells connected to a pipeline shall be made in a manner that no gas is flared, vented, or otherwise wastefully produced [used].

§3.30. Rule 30. Gas Nominations Required. [Rule 30.]

(a) **Definitions.** The following words and terms, when used in this section and in §§3.28, 3.31, and 3.34 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Well Allowables; and Gas to be Produced and Purchased Ratably) (Statewide Rules 28, 31, and 34) shall have the following meanings, unless the context clearly indicates otherwise.

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

(4) **Seller–An entity or person, whether a working interest owner, royalty interest owner, or operator of a well that directly markets gas from a well.**

(5)[(4)] Pipeline system–A network of physically connected pipelines that are operated as a single unit under normal conditions. A first purchaser's pipeline system is that portion of a physical segment of a pipeline that the first purchaser owns. If a first purchaser does not own the pipeline it uses to transport its gas, the first purchaser's pipeline system shall include all the wells from which it purchases that are on the pipeline system of the transport pipeline. A first purchaser may not segregate its purchases from any one field into two or more pipeline systems by transporting on another pipeline gas that it purchases as a first purchaser if the first purchaser is also purchasing as a first purchaser from the same field and transporting on a pipeline that it owns. A first purchaser may not segregate its purchases from any one field into two or more pipeline systems by executing gas exchange agreements. Any of a first purchaser's pipeline systems which serve a common customer or common customers in a common geographic location shall be operated in a manner to avoid unjust or unreasonable discrimination in nominations and takes as between those systems. A first purchaser shall not segregate its physically connected pipelines that are capable of being operated as a single unit under normal conditions into two or more pipeline systems or designate a gathering system as a separate system for purposes of circumventing this section or §3.34 of this title (relating to Gas to be Produced and Purchased Ratably).

(6)[(5)] Affiliate - A person or entity that owns, is owned by, or is under common ownership with another person or entity to the extent of 50% or more or that otherwise controls or is controlled by another person or entity. Affiliates of a common entity are also affiliates of each other. For purposes of this section and §§3.28, 3.31, and 3.34 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Well Allowables; and Gas to be Produced and Purchased Ratably) (Statewide Rules 28, 31, and 34), a person or entity that purchases gas solely for purposes other than resale shall not be considered an affiliate, and an interstate pipeline, as defined in the Natural Gas Policy Act of 1978, §2(15) (15 United States Code, §3301 et. seq.), shall not be considered an affiliate of an intrastate pipeline.

(b) **Pipeline system designations.** A first purchaser shall on or before a date designated by the director of the Oil and Gas Division or the director's delegate designate its pipeline system(s) pursuant to this section and shall identify its affiliates that use the same pipeline system and that are nominating under a different name, including an affiliate operating a special marketing program that is in compliance with §3.34(h) of this title (relating to Gas to be Produced and Purchased Ratably) (Statewide Rule 34). A pipeline system designation must identify the physical segment of pipeline that constitutes the pipeline system and identify by Railroad Commission of Texas lease and/or identification number and field the wells on that pipeline system from which the first purchaser is purchasing. A change in pipeline system designation is not required to add or delete well connections. The designation of a pipeline system cannot be changed by a first purchaser without prior approval by the director of the Oil and Gas Division or the director's delegate. Approval of a change in pipeline system designation cannot be given without prior notice of the requested designation given by the first purchaser to affected operators and sellers of gas from wells on the system(s) for which a change in designation is sought. A hearing to determine the proper designation of a first purchaser's pipeline system may be called by the commission, or may be requested by a first purchaser or by an operator or a seller filing a complaint. The burden of proof in the hearing shall be on the first purchaser.

(c) **Operators who use produced gas.** Any person who purchases natural gas at the wellhead, at a common point within a field or fields, or at the outlet of a processing or treating plant must determine if it is the initial purchaser. If it is the initial purchaser, it shall file nominations as required by this section. An operator using 100% of the gas from a gas well or wells for his own operations, either on leases or in a fuel system, shall file gas nominations. An operator using a portion of the gas produced from a well must notify the initial nominator in writing of the volume or percentage of total volume required, including shrinkage due to liquid separation prior to sale. The initial nominator must include that amount in its nominations. After initial notification, the operator need only inform the initial nominator of changes in the volume or percentage of total volume required.

(d) **Nominations required.** So that the commission may determine lawful market demand and set allowables for ratable production not exceeding lawful market demand, initial nominators shall file in the appropriate commission office by the ninth day of each month nominations by pipeline system of requirements for gas to be purchased and/or used by them from each reservoir or field during the following month. **This requirement to nominate is limited to fields with gas wells for which allowables are determined by an allocation formula. Nominations are not required for gas to be purchased or used from other fields including exempt fields, oil fields, and one well gas fields.** Designated representatives must file nominations in the name of first purchasers. By the fourth day of each month, an initial nominator shall inform each of the operators and sellers from which it purchases of the amount it intends to nominate for that operator or seller by field.

(e) **Nominations must equal total demand.** Every nomination shall be equal to the anticipated market demand for gas on the pipeline system of the initial purchaser [nominator] for the month for which the nomination is made, and shall include the following:

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

(f) **Nominations must be nondiscriminatory.** Nominations for a field by an initial nominator shall not exceed the deliverability available to that nominator from that field. The initial nominator shall, within a pipeline system, ratably apportion without unjust or unreasonable discrimination its nominations among the various fields from which it purchases gas. The nomination for each prorated gas field shall be a consistent percentage of the total deliverability of all gas wells and the total gas limits of all oil wells from which it purchases from all fields on its pipeline system or other apportionment that the nominator can demonstrate will not result in unjust or unreasonable discrimination, **in consideration of the obligation to adhere to the priority categories contained in subsection (g) of this section.** In nominating for a field with any well that has multiple first purchasers each first purchaser shall noanate a consistent percentage of that portion of the well s deliverability [or the well's gas limit for casinghead gas] that it has designated to the commission that it is entitled to purchase. The total nominations of the multiple first purchasers from a well shall not exceed the total deliverability or gas limit of the well. **For prorated gas fields, the** [The] nominator shall include the following on the nomination form:

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

(g) **Priorities.** Nominations [by an initial nominator for gas within a pipeline system] shall be made according to the following priorities, in order. **Nominators shall consider the requirement to comply with the following priority scheme, in making nominations for fields in which nominations are required.**

(1) First priority shall be given to gas from special allowable wells as defined in §3.31(f)(4) of this title (relating

to Gas Well Allowables) (Statewide Rule 31) granted special allowable status to prevent waste.

[(1) First priority in the nominations for the purchase of gas shall be given to casinghead gas produced from certified tertiary recovery projects approved by the commission and secondary recovery projects involving water injection, gas injection, or pressure maintenance approved by the commission to prevent waste.]

(2) Second priority shall be given to casinghead gas produced from certified tertiary recovery projects approved by the commission and secondary recovery projects involving water injection, gas injection, or pressure maintenance approved by the commission to prevent waste.

[(2) Second priority shall be given to gas from special allowable wells as defined in §3.31(f)(5) of this title (elating to Gas Well Allowables) r (Statewide Rule 31) granted special allowable status after the effective date of this section to prevent physical waste. Wells classified as special allowable wells prior to the effective date of this section pursuant to notice and hearing shall be given second priority unless a new determination is made that the special allowable status is not necessary to prevent physical waste.

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

(5) Fifth priority shall be given to gas from administrative special allowable wells as defined in §3.31(j)[(f)(6)] of this title (relating to Gas Well Allowables), [to gas from special allowable wells as defined in —3.31(f) of this title (relating to Gas Well Allowables) granted that status prior to the effective date of this section (see paragraph (2) of this subsection) without notice and hearing,] and to gas from special allowable wells as defined in §3.31(f)(4) of this title (relating to Gas Well Allowables) granted that status by the commission [subsequent to the effective date of this section] after notice and hearing for other reasons than to prevent [physical] waste.

(6) (No change.)

(h) **Reference to Rule 34.** Curtailments of production and acceptance of deliveries of gas shall be performed in accordance with the provisions of —3.34 of this title (relating to Gas to be Produced and Purchased Ratably) (Statewide Rule 34).

(i) **Severability provision.** If any provision of this section or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and the provisions of the section are declared to be severable.

§3.31. Rule 31. Gas Well Allowables. [Rule 31.]

(a) General.

(1) (No change.)

(2) If a report or item of information necessary to the assignment of an allowable is not filed on time, there shall be a one-day allowable reduction for each day the report or information is late up to 15 days. If the report is over 60 days late there shall be an additional one-day allowable reduction for each day the report or information is late beyond the 60th day.

(b) Changes in gas well allowables.

(1) Changes in allowables of gas wells currently assigned an allowable will be effective on the date of the test or date of the change affecting the well's allowable (when the operator submits special tests or information), provided the date of the test or other change [this] is not more than 15 days prior to the date the special test or information is received in the appropriate district office.

(2)-(3) (No change.)

(c) (No change.)

(d) Ascertaining allowables by adjustment of gas nominations and deliverabilities.

(1) The allocation of allowables to all wells in prorated gas fields will be determined from the nominations submitted. Prorated gas fields are reservoirs or fields in which an allocation formula is in effect. In order to ascertain the reasonable reservoir lawful market demand for the gas, nominations for gas may be adjusted by comparing the latest reported production from the field to the nominations filed for the field for that period.

(2) (No change.)

(3) Nothing in this subsection shall be interpreted as binding to prevent the commission, by appropriate order, from making other adjustments to nominations when necessary to bring allowables for gas to an amount equal to lawful market demand as required by statute.

(4) No gas well shall be given an allowable in excess of an amount determined by the [lesser of the] well's latest deliverability test on file with the commission. Wells with allowables limited by deliverability shall be allowed to accrue underproduction pursuant to subsection (h)(4) of this section [or the well's highest daily production in any month during the last 12 months in the production records of the commission at the time the allowable is assigned. The daily production is the reported monthly production divided by the number of days in the month. If there is a substantial increase in production, the commission may determine the highest daily production from monthly data submitted by the operator which is more recent than that in the production records of the commission].

(e) (No change.)

(f) **Definitions of** [Allowables for] prorated and nonprorated wells.

(1) (No change.)

[(2) "0*" allowable wells are prorated wells with an allowable assigned on a field-wide basis, excluding special allowable wells, that aids in balancing production in that field. Under "0*" allowable all production in the month that the allowable is assigned is considered overproduction.

(2)[(3)] A nonprorated well is a well for which an allowable is not determined by an allocation formula.

(3)[(4)] A limited well is a nonprorazed well with an allowable set below the maximum allowable it would receive under the allocation formula. A limited well shall be assigned an allowable at the rate that the well is capable of producing. Such wells shall be allowed to accrue underproduction pursuant to subsection (h)(4) of this section.

(4)[(5)] A special allowable well is a nonprorated well granted a fixed allowable by the commission after notice and hearing.

(5) [(6)] An administrative special allowable well is a nonprorated well that has been granted a fixed allowable pursuant to subsection (j) of this section.

(6)[(7)] Exempt allowable (X) wells are nonprorated wells in an exempt field and are assigned an allowable on a field-wide basis that allows wells to produce at capacity.

(g) Allowable adjustments [and balancing provisions] for limited wells.

[(1) A limited well shall not be allowed to accumulate underproduction.]

[(2)] If the most recent production figures reported to the commission show a limited well to be overproduced, the allowable will be revised to cover overproduction up to the maximum allowable which the well can be assigned under an allocation formula. If the indicated capability of a well to produce, plus its latest recorded overproduction, is less than its formula allowable, sufficient allowable will be assigned to balance the allowable with production.

[(3) If a limited well is assigned an allowable that results in its removal from the nonprorated classification, the underage status of the well shall be reinstated in the amount discontinued at the time the well was placed in the nonprorated category. However, credit will not be given for underproduction attributable to those months when the well was in a nonprorated category, nor will credit be given for underproduction that accumulated prior to the immediately preceding balancing period.]

(h) Balancing provision for overproduction and underproduction of gas for wells completed in prorated gas fields.

(1) (No change.)

(2) Balancing periods. For the purpose of computing and balancing overproduction and underproduction in prorated gas fields, the dates 7 a.m., March 1, and 7 a.m., September 1, are to be known as "balancing dates"; and the six-month periods beginning 7 a.m., March 1, and ending 7 a.m., September 1, and beginning 7 a.m., September 1, and ending 7 a.m., March 1, [will be considered as separate entities and] will be known as "balancing periods."

(3) (No change.)

(4) Underproduction.

(A) If during the balancing period a [prorated] gas well does not produce as much gas as is allocated to it by the commission, the operator of the well shall be permitted to carry the underproduction forward to the three [next] succeeding balancing periods [period] as future allowable credit to be produced during those periods, subject to the following provision [that period].

(B) The amount of underproduction is to be carried forward for three [into any new] balancing periods after the period in which it is accrued. If the underage is not produced by the end of the third subsequent balancing period, then the first balancing period's underproduction will be cancelled at the end of the fourth balancing period [as allowed production during such new balancing period shall consist of the actual underproduction that accrued in the balancing period immediately preceding such new balancing period; and the accumulative well status, as to underproduction, will be adjusted on each balancing date accordingly. An operator may request that underproduction not balanced during a second balancing period be carried forward to subsequent balancing periods. The operator's request must include evidence of increased market demand that will allow underproduction to be produced in the subsequent balancing period. The request may be granted administratively by the director or the director's delegate if the request was filed no later than the last day of the balancing period following the date the underproduction is cancelled, the operator has given at least 21 days' notice to all other operators in the field and the first purchaser of gas from the subject well, and no protest to the request has been filed. The request may also be approved administratively if the operator provides written waivers of objection from all to whom notice would be given as an alternative to notice and absence of protest. If the director or the director's delegate declines to grant administratively the request, the operator may request a hearing].

[(C) If a producing well has been accumulatively underproduced on each of two successive balancing dates, the well shall not be assigned a monthly allowable greater than the highest monthly production from the well during the immediately preceding balancing period; provided, however, the limited allowable assigned to the well may be adjusted to a value not to exceed the allowable applicable to the well under the allocation formula, upon certification to the commission from the operator that such well is producing gas in excess of the limited allowable assigned to it.]

(5) Overproduction.

(A) Subject to the following [prescribed] conditions, the operator of a gas well[,] may produce the well in excess of the monthly allowable allocated to the well. No well shall in any one month be produced at a rate in excess of its accumulated underproduction, if any, plus twice its monthly allowable without obtaining approval from the commission prior to the due date for the production report for the overproduced month. The commission shall grant approval only in those instances where a determination is made, based on data submitted by the operator, that no waste will occur and that market demand cannot otherwise be satisfied from the reservoir. [A well which is balanced or overproduced may not in any one month produce an amount in excess of twice its monthly allowable without obtaining approval from the commission prior to the due date for the production report for the overproduced month.] A well [which is balanced or overproduced] will not be granted such authority for more than two months in any six-month balancing period.

(B) A well overproduced as of a balancing date shall have its production rate limited to [, which was also overproduced on the balancing date immediately preceding and remained overproduced for the entire period between the two balancing dates, shall be shut in until the overproduction, existent as of the later of such two balancing dates, is made up. Upon request by an operator, the commission may grant authority to produce such a well at] a fractional part of its monthly allowable (reduced rate) until it is balanced, i.e. no longer cumulatively overproduced. The reduced rate shall be such that the balance occurs prior to the next balancing date [its production and allowable are in balance]. The director or the director's delegate may determine the permissible rate. A well which exceeds its reduced rate limitation in any given month shall be shut in until its accumulated overproduction is made up, unless approval to continue to produce at a reduced rate is granted pursuant to subparagraph (C) of this paragraph.

(C) If a protest is received or the commission declines to approve a request to continue to produce at a reduced rate, the operator of a well which under the provisions of subparagraph (B) of this paragraph, is required to be shut in, may request a hearing before the commission to determine whether shutting-in the well would damage it. Notice of the hearing will be given to all operators in the field and the first purchasers [purchaser] of gas from the subject well. If, after consideration of the evidence submitted at the hearing, the commission finds that the well would be damaged if shut in, the commission may allow the overproduction charged against it to be made up at a reduced rate [lesser rate than it would be made up if the well were shut in]. The director or the director's delegate may determine the permissible rate pending the outcome [result] of the hearing.

[(D) Except where a well is shut-in to make up overproduction or is producing at a reduced rate, overproduction existent as of any balancing date shall be made up at any time during such period; i.e., a specified fractional part of the overproduction need not be made up during each month of that balancing period, so long as all of such overproduction is made up during that balancing period.]

(i) (No change.)

(j) Administrative Special Allowable. A well which demonstrates by both deliverability [test] and production data a daily deliverability of 100 mcf or less will be assigned [is eligible for] an administrative special allowable equal to its deliverability. To avoid the assignment of a special allowable, the operator must notify the commission in writing prior to the assignment of the well's allowable for a particular month.

§3.34. Rule 34. Gas to be Produced and Purchased Ratably.

(a) General provisions. This section is promulgated to promote and maintain ratable production of natural gas and to require production in compliance with priority categories established by the commission for the purposes of preventing waste, including production in excess of market demand, protecting correlative rights, preventing discrimination, and conserving the natural resources of this state. An operator shall not produce in excess of its lawful, ratable share of the market demand as determined by this section and §§3.28, 3.30, and 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31). An operator shall produce ratably as set out in sub-

section (b) of this section and shall produce in compliance with subsection (f) of this section, which establishes priority categories of natural gas.

(1) Because production is dictated by pipeline capacity and market demand, prevention of discrimination by purchasers is a necessary complement to ratable production rules, and is essential to prevent waste and protect correlative rights [pipelines are an integral part of production regulation]. The requirements imposed on purchasers [pipelines] by this section and §§3.28, 3.30, and 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31) are necessary to regulate production and gathering, prevent discrimination, and meet market demand as provided [are enforced to assist in the regulation of production and provide the only method by which such production regulation can be enforced, and market demand met as required] by statutory law. This section and the Common Purchaser Act (Texas Civil Statutes, Natural Resources Code §111.081, et seq.) shall not be enforced in conflict with Federal Law.

(2) A first purchaser shall not discriminate between different wells from which it purchases in the same field, nor shall it discriminate unjustly or unreasonably between separate fields. The provisions of this section requiring ratable production and purchasing of gas apply to purchases and production from wells from which a first purchaser is purchasing on its pipeline system as defined in §3.30(a)(4) of this title (relating to Gas Nominations Required) (Statewide Rule 30). A first purchaser, including an affiliated special marketing program qualifying as a separate first purchaser under subsection (h) of this section, whose acts are in violation of the Common Purchaser Act (Texas Civil Statutes, Natural Resources Code, §111.081, et seq.) shall be subject to orders of the commission enforcing such Act whether or not such actions are in violation of this section or §§3.28, 3.30, or 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31).

(b) Production guidelines. An operator shall produce without discrimination between its wells in the same field on the same first purchaser's pipeline system and without unjust or unreasonable discrimination between its wells in separate fields on the same first purchaser's pipeline system. An operator shall apportion a first purchaser's delivery requests ratably to it wells in the same priority category in each field on the same first purchaser's pipeline system without discrimination in the [same] manner [as] provided in this section and §§3.28, 3.30, and 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) Statewide Rules 28, 30, and 31). An operator [and] shall not produce in excess of its ratable share of its first purchaser's market demand, as the operator's [the market demand as its] share is determined by this section [those rules]. An operator shall produce in a manner that enables purchasers to comply [compliance] with the priority categories of gas production established by the commission in subsection (f) of this section.

(c) Purchases from different fields.

(1) In making purchases and accepting deliveries from different [between] fields, a first purchaser of natural gas that purchases and accepts delivery of gas from more than one field on its same pipeline system must accept from each field a consistent percentage of the portion of the aggregate deliverability and total gas limits that it is entitled to purchase from all wells from which it purchases on its pipeline system, if tendered, unless the purchaser can demonstrate a just and reasonable basis for discriminating between fields in consideration of the priority categories established in subsection (f) of this section. Operators must produce their wells in a manner which allows purchasers to comply with this subsection.

(2) Natural gas purchases from a well by a first purchaser that uses another first purchaser's pipeline system to transport its gas and sells [the] gas purchased on that pipeline system [solely] to the first purchaser that owns the transport pipeline must be treated as first purchases by the transporting pipeline to the extent that the first purchaser sells the gas to the transporting pipeline at a downstream location [of gas by the first purchaser that owns the transport pipeline].

(d) Purchases within a field.

(1) In making purchases and accepting deliveries within fields, a first purchaser of natural gas that purchases and accepts delivery of gas from different gas wells in the same priority category (see subsection (f) of this section) in the same field on its same pipeline system shall purchase and accept from the wells from which it purchases in the field, if tendered, a consistent percentage of the allowables that the purchaser has a contractual right to purchase [portion that it is entitled to purchase of the maximum allowable that a well is entitled to under the field's allocation formula]. If purchases and deliveries from different wells in the same field become nonratable, the first purchaser shall consider commission-assigned underproduction and overproduction to establish an appropriate pattern of purchases or acceptance of deliveries to restore ratability. The first purchaser shall give preference to underproduced wells as necessary to restore ratability between the wells on the first purchaser's system over some reasonable period of time, taking into account market conditions, priority categories, and other relevant factors. Operators must produce their wells in a manner which allows purchasers to comply with this subsection.

(2) Natural gas purchases from a well by a first purchaser that uses another first purchaser's pipeline system to transport its gas and sells [the] gas purchased on that pipeline system [solely] to the first purchaser that owns the transporting [transport] pipeline must be treated as first purchases by the transporting pipeline to the extent that the first purchaser sells the gas to the transporting pipeline at a downstream location [of gas by the first purchaser that owns the transport pipeline].

(3) Purchases and deliveries of casinghead gas shall be based on the well's gas limit (see §3.49 of this title (relating to Gas-Oil Ratio)) (Statewide Rule 49) as provided in subsection (e) of this section. Overproduction and underproduction of gas is administered by the provisions of §3.31 of this title (relating to Gas Well Allowables) (Statewide Rule 31). A first purchaser shall not reduce purchases from a limited well (see §3.31(f) (3) [(4)] of this title (relating to Gas Well Allowables)) until all prorated gas wells from which it purchases in the field connected to its same pipeline system are ratably reduced to the assigned allowable of the limited well. Below that point, purchases from all prorated wells and limited wells should be reduced ratably by purchasing and accepting delivery of the same percentage of the allowables that the purchaser has a contractual right to purchase [portion that it is entitled to purchase of the maximum allowable established for the well by the field's allocation formula. If purchases and deliveries from different wells in the same field become nonratable, the first purchaser shall consider commission-assigned underproduction and overproduction in establishing an appropriate pattern of purchases or acceptances of deliveries to restore ratability]. When purchases of gas described in subsection (f)(1) [(2)] or (5) of this section are to be reduced, they shall be reduced ratably within each priority category.

(e) Casinghead gas reductions. When purchases and deliveries of casinghead gas described in subsection (f)(2) [(1)] or (3) of this section are to be reduced, each well's share of the reduction shall be calculated by multiplying the total reduction by the fractional share that each well's gas limit bears to the arithmetic sum of the aggregate gas limits of all wells in the field from which the first purchaser has been purchasing on its sa pipeline system. In calculating its reduction of a well, a first purchaser shall use that portion of the gas

limits that it is entitled to purchase. A well operating under net gas/oil ratio authority shall produce no more gas than its gas limit as it would be reduced by the previously mentioned procedure absent the net gas/oil ratio authority. **Operators must produce their wells in a manner which allows purchasers to comply with this subsection.**

(f) **Priority categories.** First purchasers of gas shall satisfy their pipeline system demand for gas by purchasing and accepting delivery of gas from the following priority categories in ascending numerical order. Lower priority category gas is gas from a higher numerical category. A first purchaser shall not within its pipeline system curtail gas from a priority category if the purchaser is Purchasing and accepting delivery of lower priority category gas as a first purchaser on its same pipeline system. A first purchaser's purchases and acceptance of delivery of first, second, or third priority category gas under an obligation to purchase and accept delivery from the tailgate of a plant processing gas to extract liquids, or from a gathering system that purchases from wells and is required by contract or by its physical connections to sell its gas entirely to the purchaser, whether or not these purchases are made as a first purchaser, shall not be curtailed if the first purchaser is purchasing and accepting delivery of lower priority category gas as a first purchaser on its same pipeline system. If curtailed, the curtailment must be ratable with like priority category gas which the first purchaser is purchasing and accepting delivery of from wells on its same pipeline system.

(1) First priority shall be given to gas from special allowable wells as defined in §3.31(f)(4) of this title (relating to Gas Well Allowables)(Statewide Rule 31) granted special allowable status to prevent waste.

[(1) First priority shall be given to casinghead gas produced from certified tertiary recovery projects approved by the commission and secondary recovery projects involving water injection, gas injection, or pressure maintenance approved by the commission to prevent waste.]

(2) Second priority shall be given to casinghead gas produced from certified tertiary recovery projects approved by the commission and secondary recovery projects involving water injection, gas injection, or pressure maintenance approved by the commission to prevent waste.

[(2) Second priority shall be given to gas from special allowable wells as defined in §3.31(f)(5) of this title (relating to Gas Well Allowables)(Statewide Rule 31) granted special allowable status after the effective date of this section to prevent physical waste. Wells classified as special allowable wells pursuant to notice and hearing prior to the effective date of this section shall be given second priority unless a new determination is ade that the special allowable status is not necessary to prevent physical waste.]

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

(5) Fifth priority shall be given to gas from administrative special allowable wells as defined in §3.31(j)[(f)(6)] of this title (relating to Gas Well Allowables) (Statewide Rule 31), [to gas from special allowable wells (as defined in §3. 31(f)(5) of this title (relating to Gas Well Allowables)) granted that status prior to the effective date of this section (see paragraph (2) of this subsection) without notice and hearing,] and to gas from special allowable wells as defined in §3.31(f)(4) of this title (relating to Gas Well Allowables) granted that status by the commission [subsequent to the effective date of this section] after notice and hearing for reasons other [reasons] than to prevent [physical] waste.

(6) (No change.)

(g) **Prohibition against discriminating in favor of purchaser's own production.** A first purchaser of natural gas may not discriminate between or against natural gas of a similar kind or quality in favor of its own production or production in which it may be directly or indirectly interested in whole or in part.

(h) **Special marketing program affiliates.** If a first purchaser elects to qualify an affiliate as a separate first purchaser in §3.30(a)(1) of this title (relating to Gas Nominations Required) (Statewide Rule 30), the first purchaser shall notify the commission that the special marketing program (SMP) is an affiliate [may designate the affiliate as a special marketing program]. The SMP [special marketing program] must comply with the following with respect to the nomination, purchase, and acceptance of delivery of natural gas.

(1) For purpose of this subsection, an affiliated first purchaser is the SMP [special marketing program] purchaser's affiliate whose pipeline is being used to transport the gas in the SMP [special marketing program].

(2) Each and every SMP [special marketing program] offer to purchase gas must be in a form that yields a binding contract upon acceptance. For purposes of subsection (h)(2)(B) of this section, a price change under a contract that provides for periodic price determinations does not constitute a new or different offer. SMP offers must be made without discrimination within a field and without unjust or unreasonable discrimination between fields, and must be made:

(A) to all sellers [operators] for all wells on the pipeline system of the affiliated first purchaser with which that affiliated first purchaser has existing gas purchase contract relationships at the time the offer by the SMP is made, and which have not received the offer;

(B) to all sellers who have previously rejected a different SMP offer;

(C) to all non-operator sellers where the operator is entitled to receive an SMP offer and where the seller notifies the SMP or its affiliated first purchaser that the seller has a legal right to market gas and desires to receive the SMP offers; and [from which the affiliated first purchaser has been purchasing and accepting delivery of gas as a first purchaser. The offer must also be made]

(D) for all first, second, and third priority category gas on the affiliated first purchaser's pipeline system which it has been purchasing and accepting for delivery under an obligation to purchase and accept delivery from the tailgate of a plant processing gas to extract liquids, or from a 9athering system that purchases from wells and is required by contract or by its physical connections to sell its gas entirely to the affiliated first purchaser, whether or not those purchases were made as a first purchaser.

(3) It is unreasonably discriminatory, and therefore will disqualify an affiliated SMP from separate first purchaser status [prohibited], for the offer to purchase gas in the SMP [special marketing program], or for any proposed release of gas for sale in the SMP [special marketing program] to require release of any claims under any existing contract or to require modification of any existing contract provisions , other than:

(A) a release of the gas for sale in the SMP [special marketing program]; or

(B) a requirement on [of] a volume-for-volume basis for gas taken in the SMP [special marketing program] to be credited against the contract from which gas is released for sale in the SMP [special marketing program], if the credit provision is limited to the period of actual participation in the SMP [special marketing program]. Nothing in this paragraph shall prohibit an operator or a seller of gas from any well from offering terms inconsistent with these provisions. The making of an offer which is not accepted shall not affect rights under existing contracts.

(4) If a well producing Priority Category 1, 2, or 3 gas is shut-in or curtailed, and waste, as defined in the Texas Natural Resources Code, Title 3, is found by the commission to exist, neither a SMP [special marketing program] purchaser nor its affiliated first purchaser may purchase

lower priority gas until all the Priority Category 1, 2, and 3 gas is produced [taken] and resulting waste is prevented. The commission shall expedite determination of waste, and may enter an emergency, temporary, or interim order upon application and affidavit proof that waste is occurring. The application and affidavit proof must be accompanied by supporting documentation, including data on well performance, and a statement that the application and affidavit proof has been served on the first purchaser(s) of the subject well(s) and any affiliated SMP [special marketing program] purchaser using the first purchaser(s) same pipeline system on or before the date the application and affidavit proof has been mailed or delivered to the commission, with the opportunity for the first purchaser to respond within five days of service or of commission receipt, whichever is latest.

(5)-(7) (No change.)

(i) **Sellers' complaint procedure.** Any operator or seller [non-operator] that is denied by the first purchaser in violation of the Common Purchaser Act (Texas Civil Statutes, the Natural Resources Code, §111.081, et seq.), this section, or §§3.28, 3.30, or 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31) the opportunity to produce a well's lawful [ratable share of gas or opportunity for a well to participate in a SMP [special marketing program] may file a complaint with the commission and request the commission to direct the first purchaser to end the discriminatory practices. A person whose acts are in violation of the Common Purchaser Act (Texas Civil Statutes, the Natural Resources Code, §111. 081, et seq.), shall be subject to orders of the commission enforcing such Act whether or not such actions are in violation of this section or §§3.28, 3.30, or 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31), to the extent not preempted by federal law. A complainant may request a hearing regarding alleged discriminatory practices or to determine whether a first purchaser is or has, through gas exchange agreements or through actions of its affiliate(s), denied an operator or seller a reasonable opportunity to market its gas.

(j) **Purchasers' complaint procedure.** If after reasonable notice by the first purchaser, an operator, or seller fails to comply with the [a] first purchaser's request to reduce production ratably in compliance with this section and §§3.28, 3.30, and 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31) the purchaser may file a complaint with the commission and request the commission to direct the operator or seller to comply with the purchaser's requests to reduce production ratably. The complainant or the operator or seller may request the commission to take further action, including setting the issue for hearing.

(k) **Hardship exceptions.** If the operation of this section or §§3.28, 3.30, and 3.31 of this title (relating to Potential and Deliverability of Gas Wells to be Ascertained and Reported; Gas Nominations Required; and Gas Well Allowables) (Statewide Rules 28, 30, and 31) causes undue hardship, the commission may after proper notice and hearing, and with due consideration of the effects of the relief afforded by this subsection upon the commission's obligation to protect the public and private interests and to prevent waste and unlawful discrimination, and protect correlative rights, grant an exception or take other appropriate action [, including action to prevent waste or protect correlative rights].

(l) **Severability provision.** If any provision of this section or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and the provisions of the section are declared to be severable.

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 September 18, 1989.

TRD-8908698 Cril Payne
Assistanct Director-Legal Division
Railroad Commission of Texas

Proposed date of adoption: November 27, 1989

For further information, please call: (512) 463-6941

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 69. Proprietary Schools and Veterans Education

Subchapter A. General Provisions

- **19 TAC §69.3**

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

The Texas Education Agency proposes the repeal of §69.3, concerning guidelines for proprietary schools. The repeal is proposed to delete unnecessary restatement in State Board of Education rules of statutory language.

Lynn Moak, deputy commissioner for research and information, has determined that for the first five-year period the section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. This change will have a significant impact on small business, however there is no way to estimate the cost of the impact at this time.

Mr. Moak and Oscar A. Rodriguez, Planner I, have determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this amendment is the streamlining of board rules by eliminating statutory language. There is no anticipated economic cost for individuals who are required to comply with the sections.

Comments on the proposal may be submitted to Oscar A. Rodriguez, Office of Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9682. All requests for a public hearing on proposed sections submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15-calendar days after notice of a proposed change in sections has been published in the *Texas Register*.

The repeal is proposed under the Texas Education Code, §32.22, which authorizes the State Board of Education to adopt policies, regulations, and rules necessary for carrying out the provisions of the Texas Proprietary School Act after consultation with the Proprietary School Advisory Commission.

§69.3. Guidelines for Proprietary Schools.

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 September 12, 1989.

TRD-8908648 W. N. Kirby
Commissioner of Education

Proposed date of adoption: November 11, 1989

For further information, please call: (512) 463-9212

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification As CPA

Certification by Examination

- **22 TAC §511.28**

The Texas State Board of Public Accoun-

tancy proposes new §511.28, concerning reexamination fees. This section permits the board to charge a fee for each subject a candidate is eligible to retake.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to reexamination fees.

§511.28. Examination Fee.

(a) An applicant who submits an initial application for the examination must pay the requisite fee.

(b) An applicant who submits an application for reexamination must pay a fee for each subject on the examination for which the applicant is eligible. The actual fee set by the board is identified in §521.2 of this title (relating to License Fees) of the board's 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, September 18, 1989.

TRD-8908725 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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Educational Requirements

• 22 TAC §511.55

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 55, concerning educational requirements under the Act. This section is repealed because the information is now contained in 22 TAC §511.60.

Bob E. Bradley, executive director has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a logical sequence of rules relating to educational requirements and the enactment of a new 22 TAC §511.55. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary or advisable to insure high standards of professional competency and learning.

§511.55. Qualification Under Current Act.

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 September 18, 1989.

TRD-8908722 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §511.55, concerning educational requirements under the Act. This section sets out three educational requirement options, one of which a candidate must meet to sit for the examination.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provides the Texas State Board of Public Accountancy with the authority to promulgate rules deemed necessary or advisable to insure high standards of professional competency and learning.

§511.55. Qualification Under the 1979 Act, as Amended in 1989. An applicant for the examination under the 1979 Act as amended in 1989 must meet one of the following education requirements in order to qualify to write the examination (effective September 1, 1989-August 31, 1997.):

(1) an applicant holds a baccalaureate degree or its equivalent from an accredited college or university recognized by the board, with at least 20 semester hours or quarter-hour equivalents in core accounting courses, as defined in §511.57 of this title (relating to Definition of Accounting Courses) . Four years of qualifying experience are required before a certificate will be issued;

(2) an applicant holds a baccalaureate degree, master's degree with a major in accounting or business administration, or five-year professional degree in accounting, or an LLB degree, or the JD degree, or its equivalent, from an accredited college or university recognized by the board, with not less than 30 semester hours or quarter-hour equivalents of accounting, of which at least 20 hours are in core accounting courses, as defined in §511.57 of this title (relating to Definition of Accounting Courses), and 20 additional semester hours or quarter-hour equivalents of related courses in other areas of business administration. Two years of qualifying experience are required before a certificate will be issued;

(3) an applicant is currently enrolled in a sufficient number of semester hours or quarter-hour equivalents to fulfill the educational requirements of this title. The results of the examination are valid only if the individual submits to the board, not later than 15 days before the date of the uniform grade release for the examination satisfactory evidence, in the form of an official transcript, that the applicant completed the requirements of paragraphs (1) or (2) of this section. In the submission, the applicant must include documentation of all grades and credits earned. An applicant who takes the examination under this paragraph and fails to submit the required evidence of completion before the deadline forfeits all examination fees.

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

Issued in Austin, Texas on September 18, 1989.

TRD-8908721 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7063

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Educational Requirements

• 22 TAC §511.56

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 56, concerning educational requirements to requalify at a higher level. This section is repealed because the information is now contained in 22 TAC §511.27.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a logical sequence of rules relating to educational requirements. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to educational requirements to requalify at a higher level.

§511.56. Requalifying at a Higher Level.

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, September 18, 1989.

TRD-8906732 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.60

The Texas State Board of Public Accountancy proposes new §511.60, concerning educational requirements for examination candidates. This section sets out the qualifications to sit for the examination which apply to a candidate qualified under the 1979 Act, as amended in 1981.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 a specific rule to address the requirements which apply to an individual who qualified under the 1981 amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules concerning educational requirements for examination candidates.

§511.60. Qualifications Under the 1979 Act, As Amended in 1981.

(a) An applicant for the examination under the 1979 Act, as amended in 1981, must meet one of the following education requirements in order to qualify to write the examination (effective September 1, 1979-August 31, 1989.)

(1) If an applicant holds a master's degree with a major in accounting, or business administration, or the equivalent, or a five-year professional degree in accounting, or an LLB degree, or the JD degree from an accredited college or university recognized by the board, and has also completed at least 50 semester hours in the study of accounting and related business subjects with at least 30 of the 50 hours in accounting, and with at least 20 of the 30 hours in accounting core subjects, the applicant will be eligible to apply for the examination. One year of qualifying experience is required before a certificate will be issued.

(2) If an applicant holds a baccalaureate degree (the BBA degree, for example) or its equivalent from an accredited college or university recognized by the board, and has also completed at least 50 semester hours in the study of accounting and related business subjects with at least 30 of the 50 hours in accounting, and with at least 20 of the 30 hours in accounting core subjects, the applicant will be eligible to apply for the examination. Two years of qualifying experience is required before a certificate will be issued.

(3) If an applicant has acquired credit from an accredited college or university recognized by the board, for at least 60 semester hours with at least 20 of the hours in accounting core subjects, the applicant will be eligible to apply for the examination. Six years of qualifying experience under the direct supervision of a CPA is required before a certificate will be issued.

(b) The provisions relating to accounting core subjects are effective for applicants initially applying to take the examination in May, 1987, and thereafter.

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 September 18, 1989.

TRD-8906731 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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CPA Examination

• 22 TAC §511.90

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 90, concerning the written examination on the rules of professional conduct. This section is repealed because the information is not contained in 22 TAC §511.163.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be logical sequence of rules relating to rules of professional conduct examination. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provides the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to certification as CPA.

§511.90. Examination on the Rules of Professional Conduct.

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, September 18, 1989.

TRD-8906730 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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Experience Requirements

• 22 TAC §511.121

The Texas State Board of Public Accountancy proposes an amendment to §511.121, concerning experience requirements to become a CPA. This section requires an applicant to meet the work experience requirement under the Act in which the applicant initially qualified. In addition, this section prohibits advance board rulings on experience.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to grant a certificate to an applicant who meets the work experience requirements.

§511.121. Application for Approval of Experience.

(a) Each candidate for certification as a certified public accountant by examination must [shall] submit to the executive director an application for approval of experience. The application must [shall] be made on a form prescribed by the board and submitted after completion of the examination requirement.

(b) All work experience must be commensurate with the section of the Public Accountancy Act under which the person qualified to write the uniform CPA examination or the section under which an individual requalified, upon the submission of additional transcripts.

(c) No advance rulings will be given on experience.

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, September 18, 1989.

TRD-8908729 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.122

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 122, concerning acceptable work experience and supervision for CPA candidates. The repeal is proposed so that a new §511.122 can be proposed.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 enactment of a new §511.122. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to approved areas of work experience for CPA candidates.

§511.122. Experience.

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 September 18, 1989.

TRD-8908719 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §511.122, concerning acceptable work experience and supervision. This section sets out acceptable areas of work experience and supervision to meet the requirements for qualification as a CPA.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to approved areas of work experience for CPA candidates.

§511.122. Acceptable Experience.

(a) All experience must be under the direct supervision of a licensed certified public accountant. Experience shall be from the following categories or any combination of these.

(1) Public practice–Under the direct daily supervision of a licensed certified public accountant employed within the company. All experience must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters.

(2) Private industry–Under the direct daily supervision of a licensed certified public accountant employed within the company. All experience must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters.

(3) Government–Under the direct daily supervision of a licensed certified public accountant employed by the agency. All experience must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters. The board will review on a case-by-case basis the following types of experience:

(A) state government as an accountant or auditor at a salary group rating of 15 or above, or a comparable rating;

(B) federal government as an accountant or auditor at a GS level of seven or above;

(C) special agent accountant with the FBI;

(D) military service, as an accountant or auditor with the Defense Contract Audit Agency or General Accounting Office.

(4) Attorney–Under the direct daily supervision of a licensed certified public accountant employed within the firm. All experience must be of a nonroutine accounting nature which continually requires independent thought and judgment on important accounting matters comparable to the experience ordinarily found in a certified public accounting firm, and shall be in one or more of the following areas:

(A) tax–individual and corporate;

(B) estate planning;

(C) state taxation relating to franchise;

(D) tax controversy.

(5) Education–Experience gained as an instructor at a college or university will qualify if evidence can be presented showing independent thought and judgment was used on nonroutine accounting matters. Only the teaching of upper division courses will be considered. All experience must be supervised by the department chairman who is a licensed certified public accountant.

(b) Experience in other positions may be approved by the board as experience comparable to that gained in the practice of public accountancy under the supervision of a certified public accountant upon certification by the person or persons supervising the candidate that the experience was of a nonroutine accounting nature which continually required independent thought and judgment on important accounting matters.

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 September 18, 1989

TRD-8908720 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.124

The Texas State Board of Public Accountancy proposes new §511.124, concerning acceptable supervision under the work experience requirement. This section defines acceptable supervision, which is necessary to meet the work experience requirements.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with the provisions of the new Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the experience requirements a candidate must meet prior to certification.

§511.124. Acceptable Supervision.

(a) Acceptable supervision must be performed by a certified public accountant on a direct daily basis. Any person acting as a supervisor in this capacity must hold an active license or permit in this state or another state.

(1) Supervision is provided whenever the person being supervised reports to, is instructed by, is reviewed by, and is evaluated directly by a certified public accountant. The supervisor in this capacity may not be an outside auditor, or one gained through intermediate levels of management.

(2) Supervision is not diminished by short absences from the work site by the licensee/supervisor. For example, absences for meal time, coffee breaks, continuing education programs, vacations, and short-term illness, are acceptable.

(3) Telecommunications equipment and computers may be used to enhance direct daily supervision, however, these devices may not be used in lieu of direct daily supervision on a full-time basis. The board requires detailed documentation if devices are used to enhance supervision.

(b) It is the responsibility of the candidate to prove that supervision was adequate and effective in any situations contrary to the previously stated examples.

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, September 18, 1989.

TRD-8908728 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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Certification

• 22 TAC §511.163

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 163, concerning replacement certificates. This section is being repealed because the information is now contained in 22 TAC §511.166.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to include the information in 22 TAC §511.166 for a more logical sequence of the rules relating to the rules of professional conduct. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the written examination on the rules of professional conduct.

§511.163. Replacement Certificates.

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, September 18, 1989.

TRD-8908718 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §511.163, concerning the written examination on the rules of professional conduct. This section requires a candidate, within six months of certificate issuance, to pass the test with a minimum score of 85%.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that all licensees will be required to demonstrate understanding and comprehension of the rules of professional conduct prior to certification. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the written examination on the rules of professional conduct.

§511.163. Examination of the Rules of Professional Conduct.

(a) Candidates applying for the issuance of the CPA certificate must pass an examination on the rules of professional conduct promulgated by the board.

(b) The examination must be completed not more than six months prior to the issuance of the CPA certificate.

(c) A grade of 85% must be scored on the exam in order to be considered passing.

(1) If a grade of 85% is not scored on the exam, the candidate will be sent another exam.

(2) Failure to score at least 85% of the re-exam test would prevent the candidate from taking the exam for six months. Failure to again score less than 85% would continue the cycle.

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, September 18, 1989.

TRD-8908717 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §511.165

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

The Texas State Board of Public Accountancy proposes the repeal of §511. 165, concerning reinstatement of certificate. This section is repealed because the information is now contained in 22 TAC §511.168.

Bob E. Bradley, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Bradley also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to include the information in this in this section in §511.168 for a more logical sequence of the rules relating to the rules of professional conduct. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules concerning the reinstatement of a certificate.

§511.165. Reinstatement of Certificate.

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, September 18, 1989.

TRD-8908734 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

The Texas State Board of Public Accountancy proposes new §511.165, concerning certificates issued by the board. This section requires all certificates to be signed by all board members and to bear the seal of the board.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 consistency in certificates issued by the board. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to certificates issued by the board bearing the signature of all board members and the seal of the board.

§511.165. Certificate. All certificates shall be issued in the name of the board and shall bear the signature of all board members and the seal of the Texas State Board of Public Accountancy.

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, September 18, 1989.

TRD-8908714 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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Chapter 513. Registration

Registration of CPAs of Other States and Persons Holding Similar Titles in Foreign Countries

• 22 TAC §513.1

The Texas State Board of Public Accountancy proposes an amendment to §513. 1, concerning applications for registration of CPAs from other jurisdictions. This section deletes territory from the list of other jurisdictions.

Bob E. Bradley, executive director, has determined that for the first five-year period the 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. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to applications from CPAs of other jurisdictions.

§513.1. Application. An individual holding a valid certificate in good standing as a certified public accountant issued by any state [or territory,] or its equivalent issued by any foreign country, may make application for registration upon a form prescribed by the board and submitted to the executive director. The application must be accompanied by the requisite fee and must [shall] include written authorization empowering the board to obtain all information concerning the applicant's qualifications and the requirements for licensing by that state [,territory,] or foreign country.

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 September 18, 1989.

TRD-8908733 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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Chapter 513. Registration

Registration of CPAs of Other States and Persons Holding Similar Titles in Foreign Countries

• 22 TAC §513.2

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

The State Board of Public Accountancy proposes the repeal of §513.2, concerning the registration of CPAs of other jurisdictions. The repeal deletes territory from foreign jurisdictions and permits the board to run an FBI check on applicants.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 enactment of a new §513.2. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The repeal is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the registration of CPAs of other jurisdictions.

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, September 18, 1989.

TRD-8908716 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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The Texas State Board of Public Accountancy proposes new §513.2, concerning the registration of CPAS of other jurisdictions. The section deletes territory from foreign jurisdictions and permits the board to run an FBI check on applicants.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a) , which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the registration of CPAs of other jurisdictions.

§513.2. Approval by the Board.

(a) An application for registration as a certified public accountant of a state or the equivalent thereto of a foreign country may at the discretion of the board, be granted if it determines the standards met by the applicant in the other jurisdiction were at least as high as the standards of this state at the time of granting a certificate as a certified public accountant. In making this determination, the board shall consider:

(1) the examination requirement in effect in such jurisdiction at the time the certificate or its equivalent was issued to the applicant;

(2) the education requirement in effect in such jurisdiction at the time the certificate or its equivalent was issued to the applicant. In passing upon the qualifications of an applicant, the board shall recognize degrees conferred by, and give credit for courses taken at colleges and universities whose credits would be accepted as transfers by the reporting institution in the State of Texas;

(3) the experience requirements shall be the same length of time as required to receive a certificate as a certified public accountant; however, the experience requirement shall be at least 12 months of public accounting experience obtained within the United States. This requirement is to demonstrate that the candidate has an understanding of generally accepted accounting principles and generally accepted auditing standards as it is customarily applied in the United States;

(4) the age and moral character of the applicant (FBI card, properly completed, must be submitted);

(5) successful completion of the examination of the rules of professional conduct.

(b) All correspondence and supporting documentation submitted shall be in English or accompanied by a certified English translation of such documents.

(c) A registration issued under the Public Accountancy Act of 1979, §14, as amended, is automatically revoked if the person does not continue to hold a current certificate, license, or degree in another state or foreign country. The board shall adopt rules to insure that a person holding a registration under this section continues to hold a current certificate, license, or degree in another state or foreign country.

(d) A person registered under this section may renew the registration in the manner provided for renewal of a license under this Act, §9 if the person continues to hold a current certificate, license,or degree in another state or foreign country.

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, September 18, 1989.

TRD-8908715 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §513.3

The Texas State Board of Public Accountancy proposes an amendment to §513. 3, concerning registration of CPAs of other jurisdictions with the Texas board. This section deletes territory from the list of other jurisdictions.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to application of CPAs from other jurisdictions.

§513.3. Registration. Upon approval of the application, the board shall register the applicant in the permanent records of the board. The registrant shall be allowed to use the title "Certified Public Accountant of _____" (indicating the state [or territory] which issued his certificate), or may use the title held in a foreign country, provided that the country of origin is indicated.

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 September 18, 1989.

TRD-8906727 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §513.4

The Texas State Board of Public Accountancy proposes an amendment to §513. 4, concerning licensees of other jurisdictions registered with the board prior to September 1, 1989. This section deletes territory from the list of other jurisdictions.

Bob E. Bradley, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bradley 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 conformity with recent amendments to the Act. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to applications received from CPAs of other jurisdictions.

§513.4. Prior Registrations. Individuals who, on September 1, 1989 [1979], are registered with the board as public accountants or certified public accountants of another state [,territory,] or foreign country need not register again, but the board shall maintain a record of their registration, and they shall be considered registered under this Act.

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 September 18, 1989.

TRD-8906726 Bob E. Bradley
Executive Directory
Texas State Board of
Public Accountancy

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 450-7066

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Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

Subchapter A. The Board

(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 State Board of Examiners of Professional Counselors or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Examiners of Professional Counselors proposes the repeal of §§681.1-681.22, concerning the board; §§681.41-681.53, concerning the practice of counseling; §§681.71-681.76, concerning complaints and violations; §§681.91-681.101, concerning formal hearings; §§681.121-681.125, concerning academic requirements for examination and licensure; §§681.141-681.145, concerning experience requirements for examination and licensure; §§681.161-681.170, concerning licensure examinations; §§681.181-681.183, concerning application procedures; §§681.191-681.193, concerning licensing; §§681.201-681.206, concerning license and specialty renewal; §§681.221-681.228, concerning counseling specialties; §§681.241-681.244, concerning criteria for determining fitness of applicants for examination and licensure; and §§681.251-681.260, concerning continuing education requirements.

These sections are proposed for repeal to allow for the adoption of new sections which will better assist licensees in understanding and following the rules.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the repeals as proposed 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. Seale also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as aresult of enforcing the sections will be to ensure that the licensing and regulation of professional counselors continues to identify competent practitioners by updating and clarifying the rules. There is no anticipated cost to individuals and there will be no impact on local employment.

Comments on the proposal should be sent to Don F. Rettberg, Executive Secretary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after the proposal has been published in the *Texas Register*. In addition, a public hearing will be held at 9 a.m, Saturday, October 7, 1989, in the board of directors meeting room, Westin Paso del Norte, 101 South El Paso Street, El Paso.

• 22 TAC §§681.1-681.22

The repeals are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.1. Purpose.

§681.2. Meetings.

§681.3. Quorum.

§681.4. Rules of Order.

§681.5. Agendas.

§681.6. Minutes.

§681.7. Elections.

§681.8. Officers.

§681.9. Committees.

§681.10. Executive Secretary.

§681.11. Transaction of Official Business.

§681.12. Official Records

§681.13. Attendance.

§681.14. Reimbursement for Expenses.

§681.15. Impartiality.

§681.16. Discrimination Policy.

§681.17. Policy on Handicapped Applicants.

§681.18. Seal.

§681.19. License Certificate.

§681.20. Registry.

§681.21. Consumer Information.

§681.22. Fees.

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

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

TRD-8906652 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: December 9, 1989

For further information, please call: (512) 458-7511.

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22 TAC §§681.1-681.23

The Texas State Board of Examiners of Professional Counselors proposes new §§681.1-681.23, concerning the board; §§681.31-681.41, concerning the practice of counseling; §§681.51-681.53, concerning application procedures; §§681.61-681.65, concerning academic requirements for examination and licensure; §§681.81-681.84, concerning experience requirements for examination and licensure; §§681.91-681.100, concerning licensure examinations; §§681.111-681.114, concerning licensing; §§681.121-681.127, concerning license and specialty renewal and inactive status; §§681.141-681. 147, concerning counseling specialties; §§681.161-681.164, concerning criteria for determining fitness of applicants for examination and licensure; §§681.171-681.180, concerning continuing education requirements; §§681. 191-681.196, concerning complaints and violations; and §§681.211-681.220, concerning formal hearing.

The new sections will replace existing department rules which are being proposed for repeal, concerning the regulation and licensing of professional counselors in the State of Texas. The new sections will update and clarify the existing rules to better assist licensees in understanding and following the rules.

The major changes concern the rearrangement of the subchapters in the chapter and the inclusion of new provisions covering the following areas: license applications and renewals; petitions for rule adoption; complaints and violations; supervisor requirements; supervised experience; license surrender; and inactive status.

Stephen Seale, Chief Accountant III, 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. Seale also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that the licensing and regulation of professional counselors continues to identify competent practitioners by updating and clarifying the rules. There is no anticipated cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal should be sent to Don F. Rettberg, Executive Secretary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after the proposal has been published in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Saturday, October 7, 1989, in the board of directors meeting room, Westin Paso del Norte, 101 South El Paso Street, El Paso.

22 TAC §§681.1-681.23

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.1. Purpose and Scope.

(a) The purpose of this subchapter is to implement the provisions in the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, concerning the Texas State Board of Examiners of Professional Counselors.

(b) The scope of this subchapter is that it covers the organization, administration, and other general procedures and policies concerning the board's operation.

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

Act–The Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

Board–The Texas State Board of Examiners of Professional Counselors.

Certification agency–An organization determined by the board to be nationally recognized as having the expertise to set minimum standards for a particular area of specialization in the practice of counseling.

Counselor–A person licensed by the board.

Department–The Texas Department of Health.

§681.3. Meetings.

(a) The board shall hold at least two regular meetings and additional meetings as necessary during each year ending on August 31.

(b) The chairperson may call meetings after consultation with board members or by a majority of members so voting at a regular meeting.

(c) Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act, Texas Civil Statutes, Article 6252-17.

§681.4. Transaction of Official Business.

(a) The board may transact official business only when in a legally constituted meeting with a quorum present.

(b) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

§681.5. Attendance.

(a) The policy of the board is that members will attend regular and committee meetings as scheduled.

(b) The board may report to the governor the attendance records of members.

§681.6. Rules of Order. Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided by this chapter.

§681.7. Agendas.

(a) The executive secretary shall prepare and submit an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chairperson.

(b) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

§681.8. Minutes.

(a) The minutes of any board meeting are official only when affixed with the original signatures of the chairperson and the executive secretary.

(b) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments or corrections prior to approval by the board.

(c) The official minutes of the board meetings shall be kept in the office of the executive secretary and shall be available to any person desiring to examine them.

§681.9. Elections.

(a) At the meeting held nearest to August 31 of each year, the board shall elect by a simple majority vote of those members present a chairperson and a vice-chairperson.

(b) A vacancy which occurs in the offices of chairperson or vice- chairperson may be filled at any regular meeting as required.

§681.10. Officers.

(a) Chairperson.

(1) The chairperson shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter.

(2) The chairperson is authorized by the board to make day-to-day minor decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(b) Vice-chairperson.

(1) The vice-chairperson shall perform the duties of the chairperson in case of the absence or disability of the chairperson.

(2) In case the office of the chairperson becomes vacant, the vice-chairperson shall serve until a successor is elected.

§681.11. Committees.

(a) The board or the chairperson with the approval of the board may establish committees deemed necessary to carry out board responsibilities.

(b) The chairperson shall appoint the members of the board to serve on committees.

(c) The chairperson may appoint nonboard members to serve as committee members on a consultant or voluntary basis subject to board approval.

(d) Committee chairpersons shall make regular reports to the board in interim written reports and/or at regular meetings.

(e) Committees may direct all reports or other materials to the executive secretary for distribution.

(f) Committees shall meet when called by the chairperson or when so directed by the board.

§681.12. Executive Secretary.

(a) The executive secretary of the board shall be an employee of the department appointed by the commissioner of health, after consultation with the board, as the administrator of board activities.

(b) The executive secretary shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board unless another custodian is designated by the board.

(c) The executive secretary shall exercise general supervision over persons employed in the administration of the Act.

(d) The executive secretary shall be responsible for the investigation of complaints and for the presentation of formal complaints.

(e) The executive secretary shall handle all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department or other agency with appropriate statutory authority.

(f) The executive secretary shall have the responsibility of assembling and evaluating materials submitted by applicants for licensure and specialty designation. Determinations made by the executive secretary that propose denial of licensure or specialty designation are subject to the approval of the appropriate committee of the board or the board which shall make the final decision on the eligibility of the applicants.

(g) The executive secretary or the executive secretary's designated substitute may serve as the administrator of licensure and specialty examinations.

§681.13. Reimbursement for Expenses.

(a) A board member is entitled to a per diem and transportation expenses as provided by the latest General Appropriations Act passed by the Texas Legislature.

(b) Payment to members of per diem and transportation expenses shall be on official state vouchers which have been approved by the executive secretary.

§681.14. Official Records.

(a) All official records of the board, except files containing information considered confidential under the provisions of Texas Civil Statutes, Article 6252-17a, shall be open for inspection during regular office hours.

(b) A person desiring to examine official records shall be required to identify himself or herself and sign statements listing the records requested and examined.

(c) Official records shall not be taken from board offices. However, persons may obtain xerographic copies of files upon written request and by paying the cost per page set by the State Purchasing and General Services Commission.

§681.15. Impartiality and Nondiscrimination.

(a) The board shall make no decision in the discharge of its statutory authority with regard to any person's race, religion, color, sex, or national origin.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or specialty or in a disciplinary action against a licensee, shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

§681.16. Policy on Handicapped Applicants.

(a) The board recognizes that handicapped applicants may encounter unusual problems in applying for licensure and will make an effort to accommodate these applicants.

(b) The board, on a case-by-case basis, may consider requests for special arrangements for handicapped applicants including assistance in taking the examination provided that such requests are reasonable and do not violate the Act or this chapter.

§681.17. Official Seal. The official seal of the board shall consist of a circle with the words "Texas State Board of Examiners of Professional Counselors" circularly arranged about the inner edge, and in the center of the circle there shall be a five-pointed star, surrounded by the live oak and olive branches common to official state seals.

§681.18. License Certificate.

(a) The board shall prepare and provide to each counselor a license certificate and a specialty designation certificate, if any, which contains the licensee's name and license number.

(b) Official licenses shall be signed by the board members and be affixed with the seal of the board.

(c) Any license certificate issued by the board remains the property of the board and must be surrendered to the board on demand.

§681.19. Registry.

(a) Each year the board shall publish a roster of counselors.

(b) The roster of counselors shall include, but not be limited to, the name, business addresses, telephone numbers, and the counseling specialties, if any, of current licensees.

(c) The board shall make a copy of the roster available to each licensee and request copies to other state agencies and the general public.

§681.20. Consumer Information.

(a) The board shall prepare information of consumer interest which describes the regulatory functions of the board and board procedures to handle and resolve consumer complaints.

(b) The board shall make consumer information available to the general public and appropriate state agencies.

§681.21. Fees.

(a) The board shall establish fees to provide the funds to support its activities.

(b) The schedule of fees shall be as follows:

(1) application fee–$30;

(2) licensure examination fee–$30;

(3) licensure fee–$36;

(4) specialty designation fee–$30;

(5) specialty examination fee (if applicable)–$30;

(6) renewal fee-licensure only–$30;

(7) renewal fee-licensure with specialty designation–$50;

(8) late renewal fee-licensure only (when renewed after expiration date but on or within 90 days of expiration)–$60;

(9) late renewal fee-licensure with specialty designation (when renewed after expiration date but on or within 90 days of expiration)–$100;

(10) licensure/renewal penalty fee (must be paid along with renewal fee when license is renewed more than 90 days but within one year of the expiration date) –$50;

(11) inactive status fee–$75;

(12) license certificate duplication or replacement fee–$10; and

(13) returned check fee–$15.

(c) Fees paid to the board by applicants are not refundable except in accordance with §681.22 of this title (relating to Processing Procedures).

(d) Any remittance submitted to the board in payment of an application fee, a licensure renewal penalty fee with the renewal fee, or a returned check fee, must be in the form of a cashier's check or money order.

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

§681.22. Processing Procedures.

(a) Time periods. The board shall comply with the following procedures in processing applications for licensure and renewal.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of application for licensure–20 working days;

(B) letter of application deficiency–20 working days; and

(C) issuance of license renewal after receipt of documentation of all renewal requirements–10 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with law and of the opportunity for a formal hearing. The time periods are as follows:

(A) letter of approval for examination–20 working days;

(B) initial letter of approval for licensure–180 working days (This time limit reflects the applicant's successful completion of the next examination. However, the time may reach 350 working days because of actions of the applicant.);

(C) letter of denial of licensure–180 working days (This time limit reflects the applicant's successful completion of the next examination. However, the time may reach 350 working days because of actions of the applicant.); and

(D) issuance of license renewal after receipt of documentation of all renewal requirements–10 working days.

(b) Reimbursement of fees.

(1) In the event an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the executive secretary. If the executive secretary does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(2) Good cause for exceeding the time period is considered to exist if the number of applications for licensure and licensure renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the executive secretary, the applicant may appeal to the chair of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chair at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The executive secretary shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The chair shall provide written notice of the chair's decision to the applicant and the executive secretary. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(d) Contested cases. The time periods for contested cases related to the denial of licensure or license renewals are not included within the time periods stated in subsection (a) of this section. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the board is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

§681.23. Petition for the Adoption of a Rule.

(a) Purpose. The purpose of this section is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing, shall state the petitioner's name, address, and phone number, and shall contain the following:

(A) a brief explanation of and justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The board may deny a petition which does not contain the information described in paragraph (2) of this subsection.

(4) The petition shall be mailed or delivered to the Texas State Board of Examiners of Professional Counselors, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive secretary shall submit the petition to the board for consideration.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rule-making procedures

in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5. The board may deny parts of the petition and/or institute rule-making procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rule-making procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The board may refuse to consider any subsequent petition for the adoption of the same or similar rule submitted within six months after the date of the initial petition.

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 September 19, 1989

TRD-8908865 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: December 9, 1989

For further information, please call:(512) 458-7511.

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Subchapter B. The Practice of Counseling

• 22 TAC §§681.31-681.41

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.31. Purpose and Scope.

(a) The purpose of this subchapter is to implement the provisions of the Act, §6(e)(3), concerning a code of ethics.

(b) The scope of this subchapter establishes standards of professional and ethical conduct required of a counselor.

§681.32. Professional Representation.

(a) A counselor shall not misrepresent any professional qualifications or associations.

(b) A counselor shall not misrepresent any agency or organization by presenting it as having attributes which it does not possess.

(c) A counselor shall not make unreasonable, misleading, deceptive, fraudulent, exaggerated or unsubstantiated claims about the efficacy of any services.

(d) A counselor shall not encourage or, within the counselor's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the counselor.

§681.33. Relationships with Clients.

(a) A counselor shall make known to a prospective client the important aspects of the professional relationship including fees and arrangements for payment which might affect the client's decision to enter into the relationship.

(b) A counselor shall inform the client of the purposes, goals, techniques, rules of procedure, and limitations that may affect the relationship at or before the time that the counseling relationship is entered.

(c) A counselor shall provide counseling services only in the context of a professional relationship and not by means of newspaper or magazine articles, radio or television programs, mail, or means of a similar nature.

(d) No commission or rebate or any other form of remuneration shall be given or received by a counselor for the referral of clients for professional services.

(e) A counselor shall not use relationships with clients to promote, for personal gain or the profit of an agency, commercial enterprises of any kind.

(f) A counselor shall not, under normal circumstances, be involved in the counseling of family members, intimate friends, close associates, or others whose welfare might be jeopardized by such a dual relationship.

(g) A counselor shall not, in normal circumstances, offer professional services to a person concurrently receiving counseling assistance from another professional except with the knowledge of the professional.

(h) A counselor shall personally take reasonable action to inform responsible authorities and appropriate individuals in cases where a client's condition indicates a clear and imminent danger to the client or others.

(i) In group counseling settings, the counselor shall take reasonable precautions to protect individuals from physical and/or emotional trauma resulting from interaction within the group.

(j) A counselor shall not engage in activities that seek to meet the counselor's personal needs at the expense of a client.

(k) A counselor shall not engage in sexual contact or intimacies with any client or with a person who has been a client within the past two years. A counselor shall not provide counseling services to a person with whom the counselor has had a sexual relationship.

(l) A counselor shall keep accurate records of counseling services to include, but not limited to, dates of services, types of services, significant actions taken, and billing information.

(m) A counselor shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement. Supervisory relationships between a counselor and any other person used by the counselor to provide services to a client, shall be clearly explained to a client and shall be so reflected on billing documents.

(n) A counselor shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from it.

§681.34. Testing.

(a) A counselor shall make known to clients the purposes and explicit use to be made of any testing done as a part of a professional relationship.

(b) A counselor shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgement and permission of the publisher.

(c) A counselor shall not administer any test without the appropriate training and experience to administer and interpret the test.

(d) A counselor must observe the necessary precautions to maintain the security of any test administered by the counselor or under the counselor's supervision.

§681.35. Drug and Alcohol Use. A counselor shall not abuse the use of alcohol or drugs or use illegal drugs of any kind.

§681.36. Confidentiality.

(a) Communication between a counselor and client and the client's records are confidential under the provisions of Texas Civil Statutes, Article 5561h and other state statutes where such statutes apply to a counselor's practice.

(b) A counselor shall not disclose any communication or record of a client except as provided in Texas Civil Statutes, Article 5561h or other state statutes.

§681.37. Counselors and the Board.

(a) Any person licensed as a counselor is bound by the provisions of the Act and this chapter.

(b) A counselor shall have the responsibility of reporting alleged misrepresentations or violations of this chapter to the board's executive secretary.

(c) A counselor shall keep his or her board file updated by notifying the board of changes of name, highest academic degree granted, address, telephone number, and employment.

(d) The board may ask any applicant for licensure as a counselor or specialty designation, whose file contains negative references of substance to come before the board for an interview before the licensure or specialty designation process may proceed.

(e) The board shall consider the failure of a counselor to respond to a request from the board or executive secretary for information or other correspondence, as unprofessional conduct and grounds for disciplinary proceedings.

(f) Applicants for licensure or specialty designation shall not use current members of the board as references.

§681.38. Assumed Names.

(a) An individual practice by a counselor may be incorporated in accordance with applicable law.

(b) When an assumed name is used in any practice of counseling, the name of one counselor must be listed in conjunction with the assumed name. An assumed name used by a counselor must not be false, deceptive, or misleading.

§681.39. Display of License Certificate.

(a) A counselor shall display the license certificate and annual renewal certificate issued by the board in a prominent place in the primary location of practice.

(b) An applicant shall not display a license certificate or annual renewal certificate issued by the board which has been xerographically or otherwise reproduced.

(c) A counselor shall not make any alteration on a license certificate or annual renewal certificate issued by the board.

§681.40. Advertising and Announcements.

(a) Information used by a counselor in any advertisement or announcement of services shall not contain information which is false, inaccurate, misleading, incomplete, out of context, or deceptive.

(b) The board imposes no restrictions on advertising by a counselor with regard to the use of any medium, the counselor's personal appearance or the use of his personal voice, the size or duration of an advertisement by a counselor, or the use of a trade name.

(c) All advertisements or announcements of counseling services including telephone directory listings by a person licensed by the board, shall clearly state the counselor's licensure status by the use of a title such as "Licensed Counselor", or "Licensed Professional Counselor", or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

(d) A counselor may not claim or advertise a counseling specialty approved by the board unless the qualifications of the specialty have been met by the counselor and the counselor has been approved for the specialty designation by the board.

(e) A counselor shall not include in advertising or announcements any information or any reference to certification in a field outside of counseling or membership in any organization, which may be confusing or misleading to the public as to the services or legal recognition of the counselor.

§681.41. Research and Publications.

(a) In research with a human subject, a counselor is responsible for the subject's welfare throughout a project and shall take reasonable precautions so that the subject shall suffer no injurious emotional, physical, or social effects.

(b) A counselor shall confine the use of data obtained from a counseling relationship for the purposes of education and/or research to content that can be disguised to ensure full protection of the identity of the subject client.

(c) When conducting and reporting research, a counselor must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A counselor must give due credit through joint authorship, acknowledgement, footnote statements, or other appropriate means to those who have contributed significantly to the counselor's research and/or publication.

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 September 19, 1989.

TRD-8908666 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

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For further information, please call: (512) 458-7511

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Subchapter B. The Practice of Counseling

• **22 TAC §§681.41-681.53**

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.41. Purpose.

§681.42. Definitions.

§681.43. Professional Representation.

§681.44. Relationships With Clients.

§681.45. Felony Conviction.

§681.46. Drug and Alcohol Use.

§681.47. Confidentiality.

§681.48. Counselors and the Board.

§681.49. Advertising and Announcements.

§681.50. Display of License Certificate.

§681.51. Testing.

§681.52. Research and Publications.

§681.53. Individual and Corporate Practice.

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

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Subchapter C. Application Procedures

• 22 TAC §§681.51-681.53

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorizes the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.51. Purpose. The purpose of this subchapter is to set out the application procedures for examination and licensure.

§681.52. General.

(a) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official board forms.

(b) The board will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(c) The board must receive all required application materials at least 30 days prior to the date the applicant wishes to take the examination.

(d) The board will send a notice to an applicant who does not complete an application in a timely manner listing the additional materials required. An application not completed within 30 days after the date of the board's notice, may be voided.

§681.53. Required Application Materials.

(a) Application form. The application form shall contain:

(1) specific information regarding personal data, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, educational background including practicum experience, supervised experience, and references;

(2) a statement that the applicant has read the Act and board rules and agrees to abide by them;

(3) the applicant's permission to the board to seek any information or references it deems fit to determine the applicant's qualifications;

(4) a statement that the applicant, if issued a license, shall return the license to the board upon the revocation or suspension of the license;

(5) a statement that the applicant understands that fees submitted in the licensure process are non-refundable;

(6) the applicant's signature, dated and notarized; and

(7) a recent full-face wallet size photograph of the applicant with the imprint of the notary seal on the edge.

(b) Practicum report form. The practicum report form shall contain:

(1) the applicant's name;

(2) the name and address of the agency or organization where the practicum was done (a separate form should be used for each practicum);

(3) the name, address, degree, position, and licensure status of the supervisor of the practicum;

(4) inclusive dates of the practicum, the number of clock hours of practice, the number of academic semester hours awarded, and the name of the school at which the practicum was taken;

(5) the type of setting, the kinds of clients seen, and the counseling methods employed;

(6) any evaluation of the counseling skills of the applicant; and

(7) the signature of the supervisor or agency or school official who can formally attest to the applicant's practicum experience.

(c) Supervised experience form. The supervised experience form must be completed by the applicant's supervisor and contain:

(1) the name of the applicant;

(2) the name, address, degree, licensure status, and credentials of the applicant's supervisor;

(3) the name and address of the agency or organization where the experience was gained;

(4) the inclusive dates of the supervised experience and the total number of hours of practice;

(5) the number of hours of weekly face-to-face supervision given to the applicant, the total number of supervisory hours received by the applicant in the experience and the types of supervision used;

(6) the applicant's employment status during supervised experience;

(7) the types of clients seen and counseling methods used;

(8) the supervisor's evaluation of the applicant's counseling skills and competence for independent or private practice; and

(9) the supervisor's notarized signature.

(d) Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board by the applicant's school(s).

(e) References. An applicant must have board reference forms submitted by three persons who can attest to the applicant's counseling skills and professional standards of practice.

(1) The references shall be persons who are not named elsewhere in the applicant's application and are not current members of the board.

(2) References must include at least one instructor and one licensed or certified professional in a counseling related profession. All references must be from persons in the counseling profession or appropriately related professions.

(f) Other documents. Vitae, resumes, and other documentation of the applicant's credentials may be submitted.

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

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

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Subchapter D. Academic Requirements for Examination and Licensure

• 22 TAC §§681.61, 681.62, 681.64, 681.65

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.61. Purpose. The purpose of this subchapter is to set out the academic requirements for examination and licensure as a counselor.

§681.62. General.

(a) The board shall accept as meeting licensure requirements graduate work done at American universities which hold accreditation or candidacy status from accepted regional educational accrediting associations as reported by the American Association of Collegiate Registrars and Admissions Officers.

(b) Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(c) The relevance to the licensing requirements of academic courses, the titles

of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means.

(d) The board shall count no undergraduate level courses taken by an applicant as meeting any academic requirements, unless the applicant's official transcript clearly shows that the course was awarded graduate credit by the school.

(e) The board shall accept no course work which an applicant's transcript indicates was not completed with a passing grade or for credit.

(f) In the case of course work taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below "B" or pass, shall be counted toward meeting academic requirements for examination or licensure.

(g) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two thirds of a semester hour.

(h) A person who wishes to make up academic deficiencies may be assured that the additional work done will be acceptable to the board by submitting an official application and a proposed plan to complete academic requirements which the board will evaluate.

§681.64. Academic Requirements.

(a) Persons applying for examinations and licensure must have:

(1) a graduate degree on at least the master's level; and

(2) a planned graduate program in counseling or its substantial equivalent of at least 45 semester hours which an applicant completed at an accredited school. The 45 semester hours may be course work taken in the required graduate degree program.

(b) A graduate degree under subsection (a)(1) of this section or the substantial equivalent of a planned graduate program in counseling, must be any planned graduate program of at least 45 semester hours which was designed to train a person to provide direct services to assist individuals or groups in a counseling relationship in the resolution of personal-social, educational, or occupational problems.

(c) Applicants must also have a supervised practicum experience that is primarily counseling in nature of at least 300 clock hours which were a part of the required planned graduate program.

(1) The required practicum experience must have been primarily in the provision of direct counseling services. For practicums beginning on or after June 30, 1990, at least 100 hours of direct client counseling contact must be shown.

(2) Academic credit or other acknowledgement of the practicum must appear on the applicant's official graduate transcript.

(3) No practicum course intended primarily for practice in the administration and grading of appraisal or assessment instruments, shall count toward the 300 clock-hour requirement.

§681.65. Academic Course Content.

(a) An applicant must have as a part of the required graduate degree, planned graduate program in counseling, or the substantial equivalent course work in each of the following specific areas:

(1) normal human growth and development–any course which deals with the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through old age;

(2) abnormal human behavior–any course which offers study in the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques–any course which deals with the principles, concepts, and procedures of systematic appraisal or assessment of client needs, which may include the use of both non-testing approaches and test instruments but not projective techniques;

(4) counseling theories–any course which surveys the major theories of counseling;

(5) counseling methods or techniques–at least two courses in methods or techniques used to provide counseling services, including one course in counseling individuals;

(6) group dynamics, theories, techniques–any course dealing with the theory and types or groups, including dynamics, and the methods of practice with groups;

(7) research–any course in the methods of research which may include the study of statistics or a thesis project in an area relevant to the practice of counseling;

(8) life style and career development–any course which deals primarily with areas such as theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(9) social and cultural foundations–any course which deals primarily in areas such as studies of change, ethnic groups, roles of women, urban and rural societies, population patterns, cultural patterns, and differing life styles; and

(10) professional orientation–any course which deals primarily with the objectives of professional organizations, codes of ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling services.

(b) The remaining courses needed to meet the 45 graduate-hour requirement shall be in areas directly supporting the development of an applicant's counseling skills such as practicum or internship credit, courses to meet specialty requirements, and other courses related primarily to counseling.

(c) If an applicant completes a titled course, which does not meet the entire content requirements of a course(s) named in subsections (a) and (b) of this section, the applicant may submit evidence to the board that the required content was covered in portions of more than one course.

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

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Robert A. MacLean, M.D.
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Texas Department of Health

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Subchapter C. Complaints and Violations

• 22TAC §§681.71-681.76

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.71. Purpose

§681.72. Revocation or Suspension of Licensure.

§681.73. Violations by Non-Licensed Persons.

§681.74. Power to Sue.

§681.75. Complaint Procedures.

§681.76. Licensing of Persons With Criminal Backgrounds To Be Professional Counselors.

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

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Subchapter E. Experience Requirements for Examination and Licensure

• 22 TAC §§681.81-681.84

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.81. Purpose. The purpose of this subchapter is to set out the experience requirements for examination and licensure as a counselor.

§681.82. Experience Requirements (Internship).

(a) Applicants for examination must have completed two years or 2,000 clock hours of supervised counseling experience acceptable to the board.

(b) Experience submitted in terms of years must reflect a total of at least 2, 000 clock hours of practice or an average of at least 20 clock hours per week of practice.

(c) Experience shall be acceptable to the board if:

(1) it was begun and completed after the completion of a graduate degree in counseling or its substantial equivalent or after the completion of a planned graduate program of at least 45 semester hours in counseling or its substantial equivalent. However, on a case by case basis, the board may count practicum or internship which was part of an applicant's academic training and in excess of the required practicum hours toward the supervised experience requirements provided that the applicant requests this consideration in writing;

(2) it consisted primarily of the provision of direct counseling services within a professional relationship to individuals or groups to assist them in the resolution of personal-social, educational, or occupational problems. For internships beginning on or after June 30, 1989, 1,000 hours of direct client counseling contact must be shown;

(3) the applicant received direct supervision consisting of at least one hour a week of face-to-face supervision in individual or group settings with no more than one half of the total hours of supervision having been received in group supervision; and

(4) the experience was under the direct supervision of a supervisor acceptable to the board.

§681.83. Supervisor Requirements.

(a) A supervisor acceptable to the board must be one of the following:

(1) a person licensed by the board or a person licensed as a counselor in another state who has the academic training and experience or specialty designation to supervise the counseling services being provided by a counseling intern;

(2) a person licensed or certified by this state or any other state in a profession that provides counseling with the academic training and experience to supervise the counseling services offered by the intern. This person may be a licensed psychologist, a licensed physician with board certification as a psychiatrist, or a certified social worker advanced clinical practitioner. The person must submit to the board proof of licensure and certification, official graduate transcripts, and other appropriate documentation; or

(3) a person in a geographical area where no appropriate licensure or state certification is available who submits to the board relevant official graduate transcripts, documentation of practicum and experience and any professional certifications which demonstrate that the person is qualified to supervise the type of counseling practice performed by the intern.

(b) A supervisor under subsection (a)(1) or (2) of this section must have been licensed or certified in accordance with the following requirements.

(1) Prior to January 1, 1990, there are no minimum required licensure times.

(2) A person who commences supervision of an intern on or after January 1, 1990, must have been licensed or certified for a minimum of two years.

(3) A person who commences supervision of an intern on or after January 1, 1991, must have been licensed or certified for a minimum of three years.

(4) A person who commences supervision of an intern on or after January 1, 1992, must have been licensed or certified for a minimum of four years.

(5) A person who commences supervision of an intern on or after January 1, 1993, must have been licensed or certified for a minimum of five years.

(c) A supervisor must be approved by the board by submitting a notarized board form as well as the other required documentation of credentials before any supervision provided by the supervisor will be approved.

§681.84. Other Conditions for Supervised Experience.

(a) A person who has commenced and is in the process of completing the 24 months or 2, 000 hours of supervised experience, may not practice within his or her own private independent practice of counseling as part of such months or hours and may not count the months or hours spent in the person's private independent practice of counseling as part of the supervised experience. However, the person may be employed in his or her supervisor's private practice of counseling as part of such months or hours.

(b) A supervisor may not be in the employ of the person whom he or she is supervising.

(c) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to a counseling intern. This subsection shall be effective for internships beginning on or after June 30, 1989.

(d) During the period of supervised experience, a counseling intern may be employed on a salary basis or be used within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and lines of responsibility. The board may require that the applicant provide documentation of all work experience.

(e) During internship, the full professional responsibility for the counseling activities of an intern shall rest with the intern's official supervisor.

(f) All supervised experience submitted in fulfillment of the board's requirements, must have been on a formal basis by contract or other specific arrangement prior to the period of supervision. Supervision arrangements must include all specific conditions agreed to by the supervisor and supervisee.

(g) If a counseling intern enters into contacts with both a supervisor and an organization with which the supervisor is employed or affilitated, the contract between the organization and intern will clearly indicate that counseling services will be performed on the site(s) of the organization, no payment for services are to be made directly by a client to the intern, clients records remain the property of the organization, liability remains with the or-

ganization and/or the supervisor, and there are no financial arrangements between the organization and intern that have been made that extend beyond the period of supervision.

(h) Group supervised experience of an applicant for examination may count toward an applicant's experience requirement only if the supervision group consisted of no more than six supervisees.

(i) Individual supervision of an applicant shall count toward the applicant's experience requirement only if the supervisor supervised no more than eight persons at any one time either in group or individual supervision for the inclusive dates of the applicant's supervised experience.

(j) An applicant may have no more than two supervisors unless board approval is received for further supervisors. The applicant's former supervisor or agency must submit a notarized statement explaining the reasons for the change of supervisor.

(k) A person beginning internship may assure that the internship meets the requirements of the board by submitting an application, documentation of practicum, a copy of the signed supervision contract, and a notarized statement from the supervisor or official document from an agency or other organization, outlining the details of the internship to which the board will reply. The documents and fee submitted will be considered part of the application for examination and licensure and will not need to be resubmitted.

(l) A supervisor must comply with the provisions of §681.32 of this title (relating to Professional Representation) and of §681.33 (a)-(b), (d)-(f) , (j)-(h) and (n) of this title (relating to Relationships With Clients).

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

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TRD-8908869 Robert A. MacLean, M.D.
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Subchapter D. Formal Hearings

• 22TAC §§681.91-681.101

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.91. Purpose.

§681.92. Definitions.

§681.93. General.

§681.94. Notice.

§681.95. Parties to the Hearing.

§681.96. Subpoenas.

§681.97. Depositions.

§681.98. Pre-Hearing Conferences.

§681.99. The Hearing Procedure.

§681.100. Action After the Hearing.

§681.101. Licenses and Licensing.

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

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Subchapter F. Licensure Examinations Professional Counselors

• 22 TAC §§681.91-681.100

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.91. Purpose. This subchapter sets out the board's rules governing the administration, content, grading, and other procedures for examination for licensure.

§681.92. Frequency. The board shall administer licensure examinations at least twice a year or as often as deemed necessary.

§681.93. Applying for Examination.

(a) A person must apply for examination in accordance with §681.52 of this title (relating to General) and §681.53 of this title (relating to Required Application Materials). The board shall notify an applicant whose application has been approved or disapproved at least 20 days prior to the date of the next scheduled examination.

(b) An applicant who wishes to take a scheduled examination must complete an examination registration form and return it to the board with the required fee at least 10 days prior to the date of the examination.

§681.94. Examination. The examination for licensure shall be a written examination prescribed by the board.

§681.95. Locations. Examinations will be administered in Austin, unless otherwise announced by the board.

§681.96. Grading.

(a) Licensure examinations shall be graded by the board.

(b) Written examinations shall be identified by number and graded anonymously in order to insure impartiality.

§681.97. Failures.

(a) An applicant who fails the licensure examination may reapply and take a subsequent examination.

(b) An applicant who fails any two successive examinations may not reapply until two years have elapsed from the date of the last examination or until the applicant has completed nine graduate semester hours in the applicant's weakest portions of the examination.

(c) If requested, the board shall furnish an applicant who fails an examination an analysis of performance.

§681.98. Notice of Results.

(a) The board shall notify each examinee of the examination results within 30 days of the date of the examination.

(b) No matter what numerical or other scoring system the board may use in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail".

(c) If the notice of examination results will be delayed for more than 90 days after the date of the examination, the board

shall notify the applicant before the 90th day.

§681.99. Failure to Appear for Examination. If an applicant fails to appear for examination for reasons other than documented illness or other cause beyond the applicant's control after having agreed to do so by applying to take a particular examination, the applicant must reapply and pay another examination fee before being admitted to a subsequent examination.

§681.100. Failure to Apply. The application of a person who fails to apply for and take one of the first two examinations scheduled after the applicant has been notified in writing of his approval for examination, shall be voided and the applicant shall be so notified.

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

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Subchapter G. Licensing

• 22 TAC §§681.111-681.114

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.111. Purpose. The purpose of this subchapter is to set out licensing procedures of the board.

§681.112. Issuance of Licenses.

(a) The board will send each applicant whose application has been approved and who has passed the examination, if applicable, a licensure form to complete and return with the licensure fee.

(b) Upon receiving an applicant's licensure form and fee, the board shall issue the person a license containing a license number and specialty designation, if any.

(c) The board will replace a lost, damaged, or destroyed license certificate upon a written request from the counselor and payment of the license replacement fee. Requests must include a notarized statement detailing the loss or destruction of the counselor's original license or be accompanied by the damaged certificate.

(d) Upon the written request and payment of the license certificate duplicate fee by a licensee, the board will provide a licensee with a duplicate for a second place of practice which is designated in a licensee's file.

§681.113. Reciprocity.

(a) The board may grant a license without examination to a person who holds, at the time of application, a license or certificate issued by another state or territory that is acceptable to the board if the minimum requirements for the license or certificate are substantially the same as, or exceed the licensing requirements of the board, which are in effect at the time of application. The requirements of another state or territory are substantially the same as the board's requirements only if the applicant passed an examination which was required for licensure or certification in the other state or territory.

(b) The board shall consider only states and territories of the United States as acceptable for the purposes of licensure by reciprocity.

(c) In the case of licensing by reciprocity, the board shall waive only the examination requirement for licensure. Required application materials must be provided, and the application and licensure fees must be paid by the applicant. The board may accept an official copy of an applicant's file sent directly from the state board that issued the original license.

(d) An applicant applying for licensure by reciprocity must submit a copy of a current license or certificate by which the reciprocal licensure is requested; a copy of the statute and rules of the agency issuing the license and the name and address of the licensing agency; evidence that the applicant successfully passed a state licensing examination; a statement concerning complaints status; and evidence of good standing from the state board.

§681.114. Surrender of License.

(a) Surrender by licensee.

(1) A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion. The offer to surrender must be made at least 10 days prior to the next regularly scheduled board meeting.

(2) Tender of the license may be by delivery by any means to the offices of the board, return receipt requested.

(b) Acceptance by the board.

(1) The board, at its next duly scheduled meeting, shall consider whether to formally accept the voluntary surrender of a license.

(2) Surrender of a license without acceptance thereof by the board or a licensee's failure to renew the license, shall not deprive the board of jurisdiction against the licensee under the Act or any other statute.

(c) Formal disciplinary action. When a licensee has offered the surrender of his or her license after a complaint has been filed alleging violations of the Act or this chapter and the board has accepted such a surrender, that surrender is deemed to be the result of a formal disciplinary action.

(d) Reinstatement. A license which has been surrendered and accepted may not be reinstated. However, a person may apply for a new license in accordance with the Act and this chapter.

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

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Subchapter E. Academic Requirements for Examination and Licensure

• 22 TAC §§681.121-681.125

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.121. Purpose.

§681.122. General.

§681.123. Academic Requirements for Licensure Before September 1, 1982.

§681.124. Academic Requirements Effective on September 1, 1982.

§681.125. Academic Requirements Effective on September 1, 1984.

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

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TRD-8908656 Robert A. MacLean, M.D.
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Texas Department of Health

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Subchapter H. License and Specialty Renewal and Inactive Status

• 22 TAC §§681.121-681.127

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the board of health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.121. Purpose. The purpose of this subchapter is to set out the rules governing license and specialty renewal and inactive status.

§681.122. General.

(a) A counselor must renew licensure and specialty designation annually.

(b) Each counselor is responsible for renewing licensure and specialty designation and paying the renewal fee before the expiration date and shall not be excused from paying late renewal fees or renewal penalty fees.

(c) Regardless of the date the board granted a specialty designation, the date of a specialty renewal shall become the same date as that for licensure renewal.

(d) The board shall deny the renewal of a license of a counselor who is in violation of the Act or this chapter at the time of application for renewal.

(e) A counselor must have fulfilled any continuing education requirements prescribed by board rule in order to renew licensure or specialty designation.

(f) A counselor whose license is not renewed due to failure to meet all requirements for licensure renewal, must return his or her license certificate to the board and shall not advertise or represent himself or herself as a counselor in any manner.

§681.123. Staggered Renewals. The board shall use a staggered system for licensure renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) Licensure fees will be prorated if the licensee's initial renewal date, as determined by the board, occurs less than 12 months after the original date of licensure.

(3) Prorated fees shall be rounded off to the nearest dollar.

§681.124. Licensure Renewal.

(a) At least 45 days prior to the expiration date of a person's license, the board will send notice to the licensee of the expiration date of the license, the amount of the renewal fee due, and a licensure renewal form which the licensee must complete and return to the board with the required fee.

(b) The licensure renewal form shall require the licensee to provide current addresses and telephone numbers, and such information as continuing education completed, and type of practice.

(c) The board shall not consider a license to be renewed until it receives the completed license renewal form and the renewal fee, and the licensee has complied with applicable continuing education requirements. No renewal fee shall be received and accepted by the board unless and until the licensee has met the continuing education requirements.

(d) The board shall issue a renewal certificate to a licensee who has met all requirements for renewal. The licensee must display the renewal certificate in association with the license.

(e) The license of a person who made a timely request for renewal of his or her license, does not expire until the application for renewal is finally determined by the board, or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(f) The board shall not process the licensure renewal of a licensee who is a party to a formal license revocation or suspension proceedings. A formal proceeding commences when the notice described in §681.192(c) of this title (relating to Denial, Revocation, or Suspension of Licensure), is mailed by the board.

(1) Licensees whose licenses are not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(2) In the case of delay in the licensure renewal process because of formal licensure suspension or revocation proceedings, late and penalty fees shall not apply.

§681.125. Specialty Renewal.

(a) In addition to the annual licensure renewal notice, the board will provide a specialty renewal form to a licensee who holds a specialty designation.

(b) The specialty renewal form and fee are due the same day as the licensure renewal.

(c) A licensee approved for a specialty must meet all current renewal requirements including applicable continuing education requirements in order to renew that specialty.

(d) Upon receipt of the licensee's completed specialty renewal form and the fee for the renewal of a license issued with a specialty designation, the board shall include the specialty on the licensure renewal certificate.

(e) The board shall issue to a licensee who meets licensure renewal requirements, but fails to meet specialty renewal requirements a license renewal certificate without the specialty designation.

§681.126. Late Renewal.

(a) A person who renews a license or a license with a specialty designation after the expiration date but on or within 90 days after the expiration date, shall pay the appropriate late renewal fee.

(b) If a person has not renewed a license or license with a specialty designation for more than 30 days after the date of expiration, the board shall inform the person of the expiration date of the license and the amount of the fee required for renewal.

(c) The board shall revoke the license of any person not renewing by paying the required fees on or within 90 days of the expiration date. In this subsection the terms "revoke" and "revocation" mean that the board may recognize that the license of the person is expired and that the person may not advertise, practice, or represent himself or herself as a counselor in any manner.

(1) The board shall revoke an unrenewed license by a majority vote at a regular meeting and no formal hearing will be scheduled unless the revocation is contested.

(2) Upon the expiration and revocation of a person's license for failure to renew, the board may notify the person by certified mail and may require the person to return the license certificate to the board.

(d) A person whose license has been revoked for failure to pay the renewal fee or whose license was not renewed on or within 90 days of the expiration date, may apply for reinstatement within one year of the expiration date by paying the appropriate renewal fee plus the licensure renewal penalty fee in the form of a certified check or money order which the person must submit with the required license renewal form

and continuing education requirements, and a letter stating the reasons for the failure to make a timely renewal.

(e) After one year from the expiration date, a person may no longer reinstate the license and must reapply by submitting a new application, paying the required fees, and passing the licensure examination.

§681.127. Inactive Status.

(a) A licensee may request that his or her license be declared inactive by written request to the board prior to the expiration of the license. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. Inactive periods shall not exceed three years. However, consecutive inactive status periods may be approved by the board.

(b) An inactive status period shall begin on the first day of the month following board approval and payment of an inactive status fee.

(c) All privileges, fees, and continuing education requirements are not applicable during the period of inactive status. A person may not act as a counselor or represent himself or herself as a counselor during the period of inactive status.

(d) Continuing education credit cannot be earned while on inactive status.

(e) A person is subject to investigation and action under Subchapter C of this chapter (relating to Application Procedures) during the period of inactive status.

(f) A counselor may return to active status by written request to, and approval by, the board. Active status shall begin on the first day of the month following board approval and payment of a license fee. The license fee shall be prorated to the next renewal date in accordance with §681.123 of this title (relating to Staggered Renewals).

(g) If continuing education requirements have not been met prior to the time that a counselor goes on inactive status, upon return to active status the hours that were remaining to complete the three year continuing education requirement described in §681.172 of this title (relating to Deadlines) must be completed in a time period equal to the time that was remaining in the counselor's three-year cycle at the time that the counselor went into inactive status. Section 681.180 of the this title (relating to Failure to Complete Required Continuing Education) will be applicable at the end of this additional time period.

(h) Upon return to active status, the counselor's next three-year continuing education cycle will begin on the first day of the month following the licensee's birth month, and occurring after the additional time period described in subsection (g) of this section.

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

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Subchapter F. Experience Requirements for Examination and Licensure

• 22 TAC §§681.141-681.145

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.141. Purpose.

§681.142. Experience Requirements for Licensure Before September 1, 1982.

§681.143. Experience Requirements Effective on September 1, 1982.

§681.144. Supervisor Requirements.

§681.145. Other Conditions for Supervised Experience.

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

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Subchapter I. Counseling Specialties

• 22 TAC §§681.141-681.147

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorizes the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.141. Purpose. The purpose of this subchapter is to establish the criteria and procedures for the designation of specialty areas of practice for counselors.

§681.142. Determination of Counseling Specialties.

(a) The board shall consider the appropriateness of an area specialization as it relates to counselor licensure upon the receipt of a petition signed by at least 10 counselors.

(b) The petition submitted to the board requesting a specialty designation shall be accompanied by supporting documents listing proposed minimum standards for the independent practice of the requested specialty.

(c) The board shall rule on each petition for specialty designation and inform licensees of specialty areas of practice which are approved.

§681.143. Applications for Specialty Designation.

(a) General requirements. Counselors may apply for specialty designations approved by the board by submitting the following:

(1) a completed board application and required fee;

(2) a copy of any current certificate issued to the licensee by any nationally recognized certification agency which pertains to the specialty designation requested;

(3) substantiation acceptable to the board that the applicant meets the minimum academic, experience, and ethical standards established by the board for the specialty designation. This substantiation may include detailed official catalog course descriptions, statements from accredited academic institutions or professors written on the institution's letterheads, notarized statements and evaluations from supervisors or agencies where the required experience was gained, letters of reference attesting to the applicant's ethical and professional standards of practice and other appropriate documentation of expertise in the specialty area for which application is being made;

(4) evidence that any supervision received to meet a requirement set by the board for a particular specialty was re-

ceived from a supervisor who meets the board's supervision requirements for that particular specialty; and

(5) any other evidence required by the board to establish the counselor's credentials in a specialty area.

(b) Rehabilitation counseling. Rehabilitation counseling is approved as a specialty designation. A licensee must submit a copy of a current certified rehabilitation counselor certificate issued to the licensee by the Commission on Rehabilitation Counselor Certification. The licensee must request the commission to send directly to the board the letter required by subsection (a)(3) of this section. The documentation described in subsection (a)(4) of this section shall not be accepted in lieu of the letter required by subsection (a)(3) of this section. The specialty examination required by §681.145 of this title (relating to Specialty Examination) shall be the examination taken to obtain certification by the commission. No additional examination shall be required for licensing with the rehabilitation counseling specialty. The requirements of subsection (a)(5) of this section shall not apply to this specialty. This exemption is based on the requirement of the commission that the supervisor be a certified rehabilitation counselor.

§681.144. Specialty Designation by the Board.

(a) A licensee who applies and passes an examination, if required, and is approved for specialization in a counseling area designated by the board shall be issued a specialty certificate which shall be displayed only in association with the counselor's license and shall be listed as a specialist in the board's official roster.

(b) A licensee may hold no more than three specialty designations at any one time.

§681.145. Specialty Examination. A licensee applying for specialty designation must pass an examination, written, oral, situational, or all three, as approved by the board to establish competence in the counseling specialty.

§681.146. Advertising of a Counseling Specialty.

(a) Any advertising of a specialty by a counselor must make clear that the specialty designation is subordinate to licensure as a counselor.

(b) A counselor shall not claim or advertise any counseling specialty named by the board unless the counselor has met the qualifications for that specialty and been officially granted the specialty designation.

§681.147. Renewal of Specialty Designation.

(a) A counselor must renew any specialty designation as set out in Subchapter H of this title (relating to License and Specialty Renewal and Inactive Status).

(b) For rehabilitation counseling, a counselor must submit a notarized copy of a current certified rehabilitation counselor certificate issued to the counselor by the Commission on Rehabilitation Counselor Certification along with the required renewal form and fee.

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

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Subchapter G. Licensure Examinations

• 22 TAC §§681.161-681.170

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.161. Purpose.

§681.162. Frequency.

§681.163. Applying for Examination.

§681.164. Forms of Examination.

§681.165. Locations.

§681.166. Grading.

§681.167. Failures.

§681.168. Notice of Results.

§681.169. Failure to Appear for Examination.

§681.170. Failure to Apply.

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

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Subchapter J. Criteria for Determining Fitness of Applicants for Examination and Licensure

• 22 TAC §§681.161-681.164

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorizes the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.161. Purpose. The purpose of this subchapter is to set forth the criteria by which the board will determine the fitness of applicants required for approval for licensure.

§681.162. Fitness of Applicants for Licensure. In determining the fitness of an applicant for licensure, the board shall consider the following:

(1) the skills and abilities of an applicant to provide adequate counseling services to clients; and

(2) the ethical behavior of an applicant in relationships with other professionals and clients.

§681.163. Materials Considered in Determination of Fitness of Applicants. In determining the fitness of applicants for licensure, the board shall consider the following:

(1) evaluations of supervisors or instructors;

(2) statements from persons submitting references for the applicant;

(3) evaluations of employers and/or professional associations;

(4) allegations of clients;

(5) transcripts or findings from official court, hearing or investigative proceedings; and

(6) any other information which the board considers pertinent to determining the fitness of an applicant.

§681.164. Finding of Non-Fitness for Licensure. The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of licensure of the applicant:

(1) lack of the necessary skills and abilities to provide adequate counseling services in independent practice;

(2) misrepresentation of professional qualifications or association;

(3) misrepresentation of services and efficacy of services to clients;

(4) use of misleading advertising or false advertising;

(5) use of relationships with clients to promote personal gain or for the profit of an agency or commercial enterprises of any kind;

(6) engaging in sexual contact or intimacies of any kind with any client or with a person who has been a client within the past two years;

(7) a breach of confidentiality of a client except where allowed by law or rules of the board;

(8) abuse of the use of alcohol or drugs or the use of illegal drugs of any kind;

(9) any misrepresentation in the application or other materials submitted to the board; and

(10) the violation of any provision of the Act or this chapter in effect at the time of application which is applicable to an unlicensed person.

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

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Subchapter K. Continuing Education Requirements

• 22 TAC §§681.171-681.180

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorizes the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.171. Purpose. The purpose of these sections is to establish the continuing education requirements for the renewal of licensure which a counselor must complete periodically toward furthering of professional development in counseling. These requirements are intended to maintain and improve the quality of professional services in counseling provided to the public and keep the counselor knowledgeable of current research, techniques, and practice and provide other resources which will improve skill and competence in counseling.

§681.172. Deadlines.

(a) Continuing education requirements for renewal shall be fulfilled during three-year periods beginning on the first day of a counselor's renewal year and ending on the last day of the counselor's renewal year.

(b) The initial three-year period for each counselor shall include the three year period described in this section plus the period of time from the date of issuance of the licensee's first license to the first renewal date.

§681.173. Hour Requirements for Continuing Education. A licensee must complete 75 clock hours of continuing education acceptable to the board during each three-year period as described in §681.172 of this title (relating to Deadlines).

(1) A clock hour shall be 60 minutes of attendance and participation in an acceptable continuing education experience.

(2) Continuing education experiences acceptable to the board shall be those set forth in §681.174 of this title (relating to Types of Acceptable Continuing Education).

§681.174. Types of Acceptable Continuing Education. Continuing education undertaken by a counselor shall be acceptable if the experience falls in one or more of the following categories:

(1) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which employ didactic and experiential methods to increase skill and competence in counseling taught by persons who hold licensure granted by the board or an equivalent counselor licensure board in another state;

(2) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of counseling and are conducted by persons qualified within their respective professions by appropriate state licensure or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a graduate degree and certification by their respective professional associations;

(3) teaching or consultation in programs such as institutes, seminars, workshops, and conferences which are designed to increase professional knowledge related to the practice of counseling provided that such teaching and consultation is not a part of, or required as a part of, one's employment;

(4) completion of graduate academic courses in areas supporting development of skill and competence in counseling at an institution which meets the accreditation standards acceptable to the board (e.g., accreditation by a recognized accrediting agency).

§681.175. Procedures for Approval of Programs. Individuals and organizations may initiate requests for board approval and hour credits of specific programs for continuing education credit either before or after these programs occur. Approval shall be given only for the specific program described in the request.

(1) The licensee is ultimately responsible for providing, or arranging for sponsors to provide, the information necessary for the board to make a determination of the applicability of the program to the continuing education requirements.

(2) Sponsors may initiate their own requests and may, when approval is obtained in advance, announce such approval in connection with the continuing education experience utilizing statements prescribed by the board.

§681.176. Criteria for Approval of Continuing Education Activities. Each continuing education experience submitted by a licensee will be evaluated on the basis of the following criteria:

(1) attendance at programs shall be in accordance with §681.174(1) and (2) of this title (relating to Types of Acceptable Continuing Education);

(A) relevance of the subject matter to increase or support the development of skill and competence in counseling;

(B) objectives of specific information and/or skill to be learned;

(C) subject matter, educational methods, materials, and facilities utilized including the frequency and duration of sessions and the adequacy to implement learner objectives;

(D) sponsorship and leadership of programs including the name of the sponsoring individual(s) or organization(s); program leaders if different from sponsors and contact person if different from the preceding;

(2) teaching in approved programs shall be in accordance with §681.174(3) of this title (relating to Types of Acceptable Continuing Education). Documentation from sponsor(s) including evaluative statement of performance; and

(3) completion of academic working shall be in accordance with §681.174(4) of this title (relating to Types of Acceptable Continuing Education). Official graduate transcripts from accredited school showing completion of graduate hours in appropriate areas for which the licensee received at least a grade of "B".

§681.177. Determination of Clock Hour Credits. The board shall credit continuing education experiences as follows.

(1) Parts of programs which meet the criteria of §681.173 of this title (relating to Hour Requirements for Continuing Education) and §681.176 of this title (relating to Criteria for Approval of Continuing Education Activities) shall be credited on a one-for-one basis with one clock hour credit for each clock hour spent in the continuing education activity.

(2) Teaching in programs which meet the board's criteria as set out in §681.174 of this title (relating to Types of Acceptable Continuing Education) shall be credited on the basis of one clock hour credit for one clock hour taught plus two clock hours credit for preparation for each hour actually taught. No more than two thirds of the three-year continuing education requirements can be credited under this option, and credit may be granted for the same presentation or program not more than twice during any three-year cycle.

(3) Completion of academic work at an institution which meets the accreditation standards acceptable to the board shall be credited on the basis of 15 clock hours of credit for each semester hour, 10 clock hours of credit for each quarter hour, completed and for which a grade of "B" or above was received as evidenced on an official graduate transcript.

§681.178. Reporting of Continuing Education. The requirements for continuing education shall be as follows.

(1) A licensee's continuing education report shall be filed on a form provided by the board which the licensee shall complete or sign.

(2) A licensee may submit the required report at the end of the first or second year of the three-year continuing education cycle in one complete report. A licensee may submit the required report at any time during the third year of the three-year continuing euducation cycle; provided, however, continuing education must be reported and approved prior to renewal at the end of the three-year cycle or §681.180 of this title (relating to Failure to Complete Required Continuing Education) will apply. The continuing education sponsor may submit a roster on a form provided by the board of those counselors completing a continuing education experience; however, the licensee is ultimately responsible for ensuring that the board receives timely notice of the licensee's completion of any continuing education activity.

(3) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) for a program attended, signed certification by a program leader or instructor of the licensee's participation in the program by certificate, letter or letterhead of the sponsoring agency, or official continuing education validation form of the sponsoring agency;

(B) for teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving name of program, location, dates and subjects taught and giving total clock hours of teaching or consultation. Documentation such as the board's roster form, official programs or other appropriate documentation may be accepted;

(C) for completion of academic work from accredited schools, an official graduate transcript showing course credit with at least a "B" or pass grade.

§681.179. Activities Unacceptable as Continuing Education. The board will not give continuing education credit to any counselor for:

(1) education incidental to the regular professional activities of a counselor such as learning occurring from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities such as in-service programs which are required as a part of one's job;

(4) any experience which does not fit the types of acceptable continuing education in §681.174 of this title (relating to Types of Acceptable Continuing Education);

(5) any continuing education activity completed before or after the three-year period for which the continuing education credit is submitted except as allowed in §681.180(b) of this title (relating to Failure to Complete Required Continuing Education).

§681.180. Failure to Complete Required Continuing Education.

(a) The board shall not renew the license of a person who fails to complete the required continuing education within any three year reporting period.

(b) A person who failed to complete all requirements for licensure renewal may complete the required continuing education within one year after the end of his or her initial three year continuing education period. The person's license shall be renewed upon submission of the required continuing education report within the one year period and upon payment of the required late renewal fee and penalty fees as appropriate. The ending dates of a counselor's subsequent three year continuing education cycles under §681.172 (relating to Deadlines) are not changed or extended when a licensee did not meet continuing education requirements in any previous period(s).

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

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Subchapter H. Application Procedures

• 22 TAC §§681.181-681.183

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.181. Purpose.

§681.182. General.

§681.183. Required Application Materials.

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

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Subchapter I. Licensing

• 22 TAC §§681.191-681.193

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The repeals are proposed under Texas Civil Statutes, Article 4512g, §8, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.191. Purpose.

§681.192. Issuance of Licenses.

§681.193. Reciprocity.

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

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Subchapter L. Complaints and Violations

• 22 TAC §§681.191-681.196

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorizes the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.191. Purpose. The purpose of this subchapter on complaints and violations is to set forth the valid causes for the denial, revocation or suspension of licensure, and the procedures for filing complaints and allegations of statutory or rule violations.

§681.192. Denial, Revocation, or Suspension of Licensure.

(a) The board may deny, revoke, or suspend the license of a person who is proved to have been:

(1) in violation of any provision of the Act;

(2) in violation of any rule adopted by the board; or

(3) legally committed to an institution because of mental incompetence from any cause.

(b) Prior to institution of formal proceedings to deny, revoke, or suspend a license, the board shall give written notice to the licensee or applicant by certified mail, return receipt requested, of the facts or conduct alleged to warrant denial, revocation or suspension, and the licensee or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, or suspension of a license is proposed, the board shall give written notice by certified mail, return receipt requested, that the licensee or applicant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

(d) The board may set a formal hearing and may appoint a hearing examiner to conduct the formal hearing and to recommend final action to the board based on the evidence presented at the formal hearing. The board is not required to adopt the recommendations of the hearing examiner and may deny, suspend, or revoke a license as it deems appropriate and lawful.

(e) A decision of the board under this section may include any requirement to be imposed upon the licensee or applicant which is related to the individual's practice as a counselor and is deemed by the board to be appropriate and lawful.

§681.193. Violations by Non-Licensed Persons.

(a) A person commits an offense if he knowingly or intentionally acts as a licensed professional counselor without being licensed by the board. Such an offense is a Class B misdemeanor.

(b) An unlicensed person who facilitates or coordinates the provision of professional services but does not act as a licensed professional counselor is not in violation of the Act.

§681.194. Power to Sue. The board may institute a suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin the violation of the Act.

§681.195. Complaint Procedures.

(a) A person wishing to report a complaint or alleged violation against a licensee or other person shall notify the executive secretary. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) Upon receipt of a complaint, the executive secretary shall send an acknowledgement letter to the complainant and an official form which the complainant must complete and return to the board before further action can be taken. The executive secretary may accept an anonymous complaint if there is sufficient information for the investigation.

(c) The executive secretary shall investigate each complaint, gather information required by the board, and request a notarized response from the licensee or person against whom a complaint or alleged violation has been filed.

(d) A committee of the board shall be appointed to work with the executive secretary in reviewing and resolving complaints. The committee may resolve the issues of the complaint to the satisfaction of all parties involved as evidenced by a signed written statement of agreement from each party to the complaint. The executive secretary shall keep the committee informed as to the status of the complaint in a timely manner.

(e) If the committee determines that there are insufficient grounds to support the complaint, the committee shall dismiss the complaint and give written notice of the dismissal to the licensee or person against whom the complaint has been filed and the complainant.

(f) If the committee determines that there are sufficient grounds to support the complaint, the committee may request that the matters in question be investigated by the executive secretary or another duly appointed person(s).

(g) At least once each quarter, the board shall notify a complainant of the status of his complaint until the complaint is finally resolved or closed.

(h) If after due investigation a complaint or allegation is not resolved by the committee of the board, the committee may recommend that the license be revoked, suspended, or denied or that other appropriate actions as authorized by law be taken.

§681.196. Licensing of Persons With Criminal Backgrounds.

(a) Purpose. This section is designed to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain licenses as counselors.

(b) Felony conviction. The board shall consider the felony conviction of a counselor as grounds for the suspension or revocation of the counselor's license and shall review the conviction.

(c) Criminal convictions which directly relate to the profession of professional counseling.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a counselor.

(2) In considering whether a criminal conviction directly relates to the occupation of a counselor, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to be a counselor. The following felonies and misdemeanors relate to the license of a counselor because these criminal offenses indicate an inability or a tendency to be unable to perform as a counselor:

(i) the misdemeanor of knowingly or intentionally acting as a counselor without a license;

(ii) a misdemeanor and/or a felony offense under various titles of the Texas Penal Code:

(I) concerning (Title 5) which relates to offenses against the person;

(II) concerning (Title 7) which relates to offenses against property;

(III) concerning (Title 9) which relates to offenses against public order and ecency;

(IV) concerning (Title 10) which relates to offenses against public health, safety, and morals; and

(V) concerning (Title 4) which relates to offenses of attempting or conspiring to commit any of the offenses in clause (ii)(I)-(IV) of this subparagraph;

(iii) the misdemeanors and felonies listed in clauses (i)-(ii) of this subpargraph are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and this chapter;

(C) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a counselor. In making this determination, the board will apply the criteria outlined in Texas Civil Statutes, Article 6252-13c, §4(c)(1)-(7).

(d) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

(1) The board's executive secretary will give written notice to the person that the board intends to deny, suspend, or revoke the license after a hearing in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the board's hearing procedures in Subchapter M of this Chapter (relating to Formal Hearings).

(2) If the board denies, suspends, or revokes a license under these rules, the executive secretary will give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a District Court of Travis County, Texas, for review of the evidence presented to the board and its decision; and

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable.

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

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TRD-8906676

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

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For further information, please call: (512) 458-7511

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Subchapter J. License and Specialty Renewal

• 22 TAC §§681.201-681.206

The repeals are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.201. Purpose.

§681.202. General.

§681.203. Staggered Renewals.

§681.204. Licensure Renewal.

§681.205. Speciality Renewal.

§681.206. Late Renewal.

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

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

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For further information, please call: (512) 458-7511.

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Subchapter M. Formal Hearings

• 22 TAC §§681.211-681.220

The new sections are proposed under Texas Civil Statutes, Article 4512g, §6, which authorizes the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.211. Purpose. This subchapter covers the formal hearing procedures and practices that will be used by the board in handling denials, suspensions, and revocations of licensure and other contested cases and implement the contested case provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

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

APTRA–The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Contested case–A proceeding in accordance with APTRA and this chapter, including but not restricted to rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

Formal hearing–A hearing or proceeding in accordance with this subchapter and includes a contested case as defined in this section to address the issues of a contested case.

Hearing examiner–An attorney duly designated and appointed by the chairperson of the board who conducts hearings under this subchapter on behalf of the board.

Licensee–Any person licensed by the board.

Party–Each person, governmental agency, or officer or employee of a governmental agency named by the hearing examiner as having a justiciable interest in the matter being considered or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

Pleading–Any written allegation filed by a party concerning its claim or position.

§681.213. General.

(a) The board on its own motion or on petition or application from any person may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provisions of APTRA, applicable state statutes, and this chapter.

(b) A formal hearing or contested case proceeding unless otherwise determined by the board shall be held in Travis County Texas.

(c) If a hearing examiner is not utilized by the board, the board shall conduct the formal hearing and contested case proceedings, and all references in this subchapter to the hearing examiner shall be references to the board.

§681.214. Notice.

(a) The hearing examiner shall give notice of the formal hearing according to the notice requirements of APTRA.

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice, the hearing examiner may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances.

§681.215. Parties to the Hearing.

(a) All parties must have a justiciable interest in the proceedings to be designated as parties. All appearances are subject to a motion to strike upon a showing that the party has no justiciable interest in the proceeding.

(b) A party has the privilege to participate fully in any prehearing and formal hearing, to appeal as provided by law and to perform any and all duties and privileges provided by APTRA and other applicable laws.

(c) Any person not wishing to be designated as a party but desiring only to appear for the purpose of showing support or opposition or to make any general relevant statement showing support or opposition may appear at the hearing and make or file statements.

(d) The hearing examiner shall designate parties at any time prior to final closing of the hearing. No person will be admitted as a party later except upon a finding by the hearing examiner of good cause and extenuating circumstances and that the hearing will not be unreasonably delayed.

(e) In their pleadings, parties may classify themselves as applicants, petitioners, respondents, protestants, complainants, etc., but regardless of such classification, the hearing examiner has the authority to determine and designate their true status whenever necessary.

(f) A party may appear personally and/or be represented by counsel or other authorized representative.

(g) The hearing examiner may require parties of each class of affected persons to select one person to represent them in the proceedings.

§681.216. Subpoenas.

(a) On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner shall issue a subpoena to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents.

(b) There must be a showing of good cause for the subpoena, i.e., the witnesses or documents must have information that is relevant and material to the hearing. The subpoena should not result in undue harassment, imposition, inconvenience, or unreasonable expense to a party.

(c) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(d) Witnesses may be subpoenaed.

(e) Documents include books, papers, accounts, and similar materials or objects.

(f) The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by the APTRA, §14.

§681.217. Depositions. The taking and use of depositions in any contested case proceeding shall be governed by the APTRA, §14.

§681.218. Pre-hearing Conferences.

(a) In a contested case, the hearing examiner, on his own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(1) the formulation and simplification of issues;

(2) the necessity or desirabilty of amending the pleadings;

(3) the possibility of making admissions or stipulations;

(4) the procedure at the hearing;

(5) specifying the number of witnesses;

(6) the mutual exchange of prepared testimony and exhibits;

(7) designation of parties; and

(8) other matters which may expedite the hearing.

(b) The hearing examiner shall conduct the pre-hearing conference in such manner and with the necessary authority to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(c) The hearing examiner shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(d) Any action taken at the prehearing conference shall be reduced to writing, signed by the parties and made a part of the record.

§681.219. Hearing Procedure.

(a) The hearing examiner's duties. The hearing examiner shall preside over and conduct the hearing. On the day and time designated for the hearing, the hearing examiner shall:

(1) convene and call the hearing to order;

(2) state the purpose of and the legal authority for the hearing;

(3) announce that a record of the hearing will be made;

(4) outline the procedure and order of presentation that will be followed;

(5) administer oaths to those who intend to testify; and

(6) take any and all other actions as authorized by applicable law and this subchapter to provide for a fair, just, and proper hearing.

(b) Order of presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the hearing examiner will begin receiving testimony and evidence from the witnesses.

(2) Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.

(3) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the order of proceeding may be altered or modified by the hearing examiner either upon agreement of the parties or upon his own motion when such action will expedite the hearing without prejudice to any party.

(4) When the party first proceeding finishes his case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other participants to the proceedings.

(5) The hearing examiner may limit the number of witnesses whose testimony will be repetitious, and the hearing examiner may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(6) When the parties have concluded their testimony and evidence, the hearing examiner will ask the audience if any interested person desires to make a statement. If so, the interested person will be allowed to make his statement subject to cross-examination and clarifying questions by any party.

(7) After interested persons make statements or if there are no such statements, the hearing examiner, at his discretion, may allow final arguments or take the case under advisement, and shall note the time and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The hearing examiner, upon his own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the agency shall not be consolidated without consent of all parties to such proceedings unless the hearing examiner finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(d) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the hearing examiner and all other persons participating in or observing the hearing. The hearing examiner is authorized to take whatever action he deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the hearing examiner deems fair and just.

(e) The hearing record. The hearing record will include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings of them;

(5) proposed findings and exceptions;

(6) any decision, opinion, or report by the hearing examiner;

(7) all staff memoranda or data submitted to or considered by the hearing examiner or members of the agency who are involved in making the decision.

(f) Recording the hearing. The hearing examiner will keep either a stenographic or other recorded record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the APTRA, §13(g). In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(h) Rules of evidence. The hearing examiner, at a hearing, a reopened hearing, or a rehearing will apply the rules of evidence under the APTRA, §14(a), and also the following rules.

(1) Consolidation. The hearing examiner may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the hearing examiner should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Documentary evidence. Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which is typical and representative, and may, at his discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.

(3) Exhibits.

(A) Form. Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the hearing examiner or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(D) After hearing. Unless specifically directed by the hearing examiner, no exhibit will be permitted to be filed in any proceeding after the conclusion[s] of the hearing except in a reopened hearing or a rehearing.

(4) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the

parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his prepared testimony shall be subject to a motion to strike either in whole or in part.

(5) Offer of proof. When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(6) Official notice. Official notice by the hearing examiner of the board shall be governed by the APTRA, §14(q). Official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The examiner shall indicate during the course of a hearing that information of which he will take official notice. When an examiner's findings are based upon official notice of a material fact not appearing in the evidence of record, the examiner shall set forth in his proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the hearing examiner's proposal for decision.

§681.220. Action After the Hearing.

(a) Reopening of hearing for new evidence.

(1) The board may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(2) The board will reopen a hearing to include such new evidence as part of the record if the board deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(3) Notice and procedural requirements will be the same as for the original hearing.

(b) Proposal for decision.

(1) If a proposal for decision is necessary under the APTRA, §15, the hearing examiner shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs and shall file them with the hearing examiner within the time designated by the hearing examiner.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the hearing examiner.

(4) All exceptions and replies to them shall be succinctly stated.

(c) Pleadings after close. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the hearing examiner. The party filing such instrument shall provide copies of the same to all other parties of record by first class U.S. mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(d) Final orders or decisions.

(1) The final order or decision will be rendered by the board.

(2) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law, either in the body of the order or by reference to the hearing examiner's proposal for decision.

(3) All final orders shall be signed by the executive secretary and the chairperson of the board; however, interim orders may be issued by the hearing examiner in accordance with his order of appointment.

(4) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(e) Motion for rehearing. A motion for rehearing shall be governed by the APTRA, §19 and §20, or other pertinent statute and shall be addressed to the executive secretary of the board and filed with the hearing examiner.

(f) Appeals. All appeals from final board orders or decisions shall be governed by §§19 and 20 of APTRA or other pertinent statute and communications regarding any appeal shall be to the executive secretary of the board.

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 September 19, 1989.

TRD-8906677 Robert A. MacLean, M.D.
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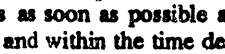
For further information, please call: (512) 458-7511



Subchapter K. Counseling Specialties

- **22 TAC §§681.221-681.228**

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.221. Purpose.

§681.222. Definitions.

§681.223. Determination of Counseling Specialties.

§681.224. Applications for Specialty Designation.

§681.225. Specialty Designation by the Board.

§681.226. Specialty Examination.

§681.227. Advertising of a Counseling Specialty.

§681.228. Renewal of Specialty Designation.

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

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Deputy Commissioner for Professional Services
Texas Department of Health

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For further information, please call:(512) 458-7511.

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Subchapter L. Criteria for Determining Fitness of Applicants for Examination and Licensure

• 22 TAC §§681.241-681.244

(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 State Board of Examiners of Professional Counselors 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 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.241. Purpose.

§681.242. Fitness of Applicants for Licensure.

§681.243. Materials Considered in Determination of Fitness of Applicants.

§681.244. Findings of Non-Fitness for Licensure.

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

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TRD-8908663 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

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For further information, please call: (512) 458-7511.

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Subchapter M. Continuing Education Requirements

• 22 TAC §§681.251-681.260

The repeals are proposed under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors, subject to approval by the Board of Health, to adopt rules concerning the regulation and licensing of professional counselors.

§681.251. Purpose.

§681.252. Deadlines.

§681.253. Hour Requirements for Continuing Education.

§681.254. Types of Acceptable Continuing Education.

§681.255. Procedures for Approval of Programs.

§681.256. Criteria for Approval of Continuing Education Activities.

§681.257. Determination of Clock Hour Credits.

§681.258. Reporting of Continuing Education.

§681.259. Activities Unacceptable as Continuing Education.

§681.260. Failure to Complete Required Continuing Education.

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

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TRD-8908664 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

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For further information, please call: (512) 458-7511.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Board of Health

Payment of Franchise Taxes by Corporations Contracting With the Department or Applying for a License from the Department

• 25 TAC §1.161

The Texas Department of Health proposes new §1.161, concerning payment of franchise taxes by corporations contracting with the department or applying for a license from the department. The new section covers delinquent corporate franchise taxes. The new section requires each corporation contracting with the department or each corporate applicant for a license or permit issued by the department to certify that its franchise taxes are current. The new section will implement the requirements of the Texas Business Corporation Act, Article 2.45, that corporations which are delinquent in taxes owed to the state may not receive a license/permit from the state or enter into a contract with the state.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period that the section will be in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the section as proposed.

Mr. Seale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to enable the department to be aware of delinquent corporate franchise taxes so that the department will not contract with or issue permits or licenses to the corporations that are delinquent. There is no anticipated economic cost to individuals who are expected to to comply with the section as proposed since the section applies to corporations. There also will be no impact on local employment.

Written comments on the proposal may be submitted to Hal Nelson, Chief, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after the proposal has been published in the *Texas Register*.

The new section is being proposed under the Texas Business Corporation Act, Article 2.45, Texas Business Codes Annotated, and Health and Safety Code, §12. 001, which provides the Texas Board of Health with the authority to adopt rules to implement its statutory responsibilities.

§1.161. Delinquent Corporate Franchise Taxes.

(a) Each corporation contracting with the Department or each corporate applicant for a license or permit issued by the Department must certify:

(1) that its franchise taxes are current;

(2) that it is a corporation which is exempt from the payment of the franchise tax;

(3) that it is an out-of-state corporation which is not subject to Texas franchise tax.

(b) The department must have the certification on file before the department will enter into the contract or issue the license or permit.

(c) If the corporate applicant makes a false statement as to corporate franchise tax status on any license or permit application, the statement is grounds for suspension or cancellation of the license or permit by the department.

(d) If the corporation makes a false statement as to corporate franchise tax status on any contract, the statement is grounds for the department canceling the contract.

(e) This section covers any contract, permit, or license issued by the department. However, the Board of Health may adopt rules covering delinquent franchise taxes for individual programs within the department. In such cases, the individual program section will prevail over this section.

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

Issued in Austin, Texas, on September 18, 1989.

TRD-8908623

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

Proposed date of adoption: December 9, 1989.

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

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Chapter 37. Maternal and Child Health Services

Chronically Ill and Disabled Children's Services

• 25 TAC §37.97

The Texas Department of Health proposes an amendment to §37.97, concerning the medical eligibility criteria. Section 37.97 adopts by reference the diagnostic medical codes (ICD-9; International Codes of Diagnoses, Ninth Edition) that are used in determining patient medical eligibility for Chronically Ill and Disabled Children's (CIDC) rehabilitation services. The proposed changes to the diagnostic medical codes will eliminate coverage for the diagnoses of inguinal hernia, torsion of testes, and undescended testicle. Diagnoses for rupture of the synovium, rupture of tendon, fractures (specific ICD-9 codes only), dislocation of elbow, and traumatic dislocation of hip will change from comprehensive coverage to coverage for rehabilitation only. Diagnoses of all fractures of the skull and face will change from comprehensive coverage to surgery only. The only proposed change to the text of §37.97 will be the amendment date.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period that the section will be in effect there will be fiscal implications as a result of enforcing or administering the section as proposed. The effect on state government will be a decreased cost to the Program of $1,300, 000 each year for fiscal years 1990-1994. There is no anticipated cost to local government or small businesses.

Mr. Seale, 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 will be that these changes in medical coverage will focus the CIDC Program more closely into the program mission and objectives; and the CIDC Program will be able to remain within budgetary limitations for the next biennium. There is no anticipated cost to individuals who are required to comply with the section. There will be no impact on local employment.

Comments on the proposal may be submitted to John E. Evans, Chief, Chronically Ill and Disabled Children's Services Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Public comments will be received for 30 days after these proposed rules have been published in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 4419c, §8, which provides the Texas Board of Health with the authority to adopt rules concerning the Chronically Ill and Disabled Children's Services Program; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§37.97. Medical Eligibility Criteria. The department adopts by reference the medical eligibility criteria published by the department, approved by the board as amended December 1989 [October 1988]. A copy of the medical eligibility criteria is indexed and filed in the Bureau of Chronically Ill and Disabled Children's Services, Texas Department of Health, 1101 East Anderson Lane, Austin, and is available for public

inspection during regular working hours.

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

Issued in Austin, Texas, on September 18, 1989.

TRD-8906620 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department Health

Proposed date of adoption: December 9, 1989.

For further information, please call: (512) 458-7355

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Chapter 61. Chronic Diseases

Kidney Health Care Program Benefits

- **25 TAC §§61.1, 61.3, 61.4, 61.6-61.9, 61.11**

The Texas Department of Health proposes amendments to §§61.1, 61.3, 61. 4, 61.6-61.9, and 61.11, concerning Kidney Health Care Program benefits. The sections cover introduction and brief description of program operation; payment of program benefits; applications; documentation of residency; denial of application, modification, suspension, or termination of patient benefits; kidney health care approved outpatient dialysis facilities and out-of-state facilities, hospitals, and providers; denial modification, suspension, or termination of facility/hospital/provider approval, vendor hold; and kidney health program appeals process.

The amendments will clarify the language of the rules; delete the "Method II" method of payment for home dialysis and allow the program to establish a flat rate of payment for home dialysis; define filing deadlines for initial claims for contracted facilities; waive the $15,000/recipient limit for recipients not eligible for Medicare who receive a transplant during the first three months of treatment; define the criteria for program recipients who are covered by the Medicare Immunosuppressant Drug Program; grant provisional approval to recipients whose eligibility has lapsed and are reapplying for program benefits; allow the program to take sanctions against any provider(s) that is excluded from participation in Medicare, Medicaid, or other state health programs; and require that applicant financial data must be provided at the time of initial application to determine co-pay liability.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government or small businesses as a result of enforcing or administering the section.

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 as proposed will be to clarify and update the sections. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

The effect on the local employment situation will be none.

Comments on the proposal may be submitted to Manuel Zapata, Director, Kidney Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7796. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4477-20, §3(13), which provide the Texas Department of Health with the authority to adopt rules to provide adequate kidney care and treatment for the citizens of the State of Texas and to carry out the purposes and intent of the Texas Kidney Health Care Act.

§61.1. Introduction and Brief Description of Program Operation.

(a) (No change.)

(b) End-stage renal disease is defined as that stage of renal impairment which is virtually always irreversible and permanent and requires dialysis or kidney transplantation to ameliorate uremic symptoms and maintain life. In order to be eligible for program benefits, persons must make application through an end-stage renal disease facility that has received program approval or interim approval, a Medicare approved hospital located in Texas, or a military or Veterans Administration hospital located in Texas which has a Joint Commission on Accreditation of Hospitals (JCAH) or American Osteopathic Association (AOA) approved renal unit. Also, the patient must have been certified as having ESRD by a nephrologist licensed to practice in Texas or in the state in which the facility is located through which the application was submitted. Limited benefits are available for **full support dialysis services** [treatments], hospitalization, laboratory charges, physician charges, [home dialysis supplies,] drugs, and transportation. There are also limited benefits for food and lodging for **eligible recipients receiving post-transplant treatment or home dialysis training.** [post-transplant patients and patients receiving home dialysis training].

(c) (No change.)

§61.3. Payment of Program Benefits.

(a) Depending on the recipient's eligibility status, **the program will only pay for benefits that are determined to be ESRD related eligible services to include, but not limited to, full support dialysis services** [benefits are available for dialysis treatments], hospitalization, physician charges, laboratory charges, [home dialysis supplies,] drugs, and transportation, up to a maximum per recipient based upon:

(1)-(4) (No change.)¡

(b) Benefits are payable only after all other possible third parties or **government entities (e.g. private/group insurance, Medicare, Medicaid, or the Veterans Administration) have met their liability. The Texas Board of Health delegates to the commissioner of health the authority to waive this requirement in individually considered cases where its enforcement will deny services to a class of end-stage renal disease patients because of conflicting state or federal laws or regulations.**

(c) (No change.)¡

(d) Payment methods.

(1) Payment can be made either directly to providers of eligible services, or as a reimbursement to the recipient for charges which he/she has paid for allowable [eligible] services. **Full support dialysis services must be provided by a contracted provider which will bill the program directly. Dialysis supplies and related services are included in the reimbursement for full support dialysis services.** [However, home dialysis patients will not be reimbursed directly for home supplies. Supplies and home support services must be provided by an approved provider which will bill KHP directly.]

(2)-(3) No Change.

(4) Physician services which are related to routine dialysis supervision and follow-up services will be reimbursed on a fee-for-service basis with a maximum monthly capitation amount. Dialysis-related physician's services will not be paid above this KHP capitation amount. **Physician's services which are not related to routine dialysis supervision, but are ESRD related may be reimbursed on a fee-for-service basis at the rate currently approved for the program by the department.** [For other than dialysis services, physicians will be reimbursed at the rate currently approved for the program by the department for allowable services.]

(5) (No change.)¡

(e) All benefits provided in behalf of recipients are limited to services [charges] incurred in Texas except for:

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

(f) All benefits paid in behalf of recipients will be for claims received by the program **meeting the filing deadlines established in this subsection.** [within 90 days after the date of service rendered (90-day filing deadline) and/or within the submission timetables listed in paragraphs (1) - (3) of this subsection.] Claims will either be paid, denied, or rejected. The procedure in paragraphs (2) [(1)] and (3) [(2)] of this subsection will be adhered to for denied or rejected claims. The procedures in paragraph (4) [(3)] of this subsection apply to the initial submission of claims for newly eligible recipients.

(1) The initial filing deadline(s) for claims submitted to the program is as follows.

(A) For recipients without other third party coverage, the initial filing deadline is 90 days from the date of service (90-day filing deadline).

(B) For recipients with other third party coverage, the initial filing deadline is 90 days from the date of service or within 60 days from the date of the third party explanation of benefits (EOB's), whichever is later, not to exceed 180 days from the date of service.

(2) [(1)] Denied claims are claims which are returned to the claimant because they are incomplete, incorrect, or contain inaccurate information.

(A) A claim which meets the initial [90-day] filing **deadline(s)** [deadline] but is incomplete would be denied. However, payment may be made if provider/recipient corrections are accomplished and the claim is returned to the program within 30 days from the program's notice of denial or within the initial [90-day] filing **deadline(s)** [deadline], whichever is later.

(B) A claim which meets the initial [90-day] filing **deadline(s)** [deadline] but is incomplete because it lacks other third party explanation of benefits (EOB's) will be denied. Payment may be made if the denied claim and **applicable** [completed] EOB's are received by the program [within 30 days from the date of the third party EOB,] within 30 days from the program's notice of denial, or within the initial [90-day] filing **deadline(s)** [deadline], whichever is later.

(C) (No change.)

(D) Claims which have been denied in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the denial letter, or within the initial [90-day] filing **deadline(s)** [deadline], whichever is later.

(E) Claims which have been denied and are resubmitted for payment under the provisions of this policy must be corrected, complete, and [be] accompanied by a copy of the program letter of denial or **detail listing**. Corrections must be made to the original claim form if at all possible. If a new claim is prepared, the original claim form must also accompany the new claim form when it is resubmitted. Additional services or charges will not be considered for payment on a claim that was initially denied and then resubmitted.

(3) [(2)] Rejected claims are claims which are returned because they fail to meet the **initial** filing **deadline(s)** [deadline] or are filed by ineligible providers or[,] recipients or are for ineligible services.

(A) Claims which have been rejected in error by the program may be reconsidered for payment if the claims, with the error identified, are returned to the program within 30 days of the date of the rejection letter, or within the initial [90-day] filing **deadline(s)** [deadline], whichever is later.

(B) Claims which have been rejected and are resubmitted for payment under the provisions of this policy must be corrected and have been previously filed within the **initial** [90 day] filing **deadline(s)** [deadline]. A copy of the program return letter of rejection must accompany the original claim. Corrections must be made on the original claim if possible. If a new claim form is prepared, the original claim form must accompany the new claim form. Additional services or charges will not be considered for payment on a claim that was initially rejected and then resubmitted.

(4) [(3)] Initial claims for newly eligible recipients will be processed according to the provisions of **paragraph (1)** [subsection (f) (1) and (2)] of this **subsection** [section] and must meet the coverage limitations of subsection (h) of this section relating to retroactive coverage. Additionally, the following filing criteria will apply.

(A) For newly eligible recipients, **initial** claims received within 60 days after the date of the program notice of eligibility will be processed for payment. **The initial** [90-day] filing **deadline(s) do** [deadline does] not apply during this 60-day grace period.

(B) Claims received after the 60-day grace period will be subject to the full provisions of this subsection and the **initial** [90-day] filing **deadline(s)** [deadline] will apply.

(5) [(4)] Claims which have been underpaid by the program may be reconsidered for a payment adjustment if the program receives written notification of the need for adjustment within 60 days from the date of the original payment (date on the payment warrant) or within the initial [90-day] filing **deadline(s)** [deadline], whichever is later. A copy of the payment warrant (if available) and any claims information which accompanied the payment warrant, or other supporting evidence, should be included with the request for reconsideration.

(6) [(5)] Denied or rejected claims, which cannot be resolved through paragraphs (2)-(4) [(1)-(3)] of this subsection, may be appealed through the program's appeal process as outlined in §61.11 of this title (relating to Kidney Health Program Appeals Process).

(7) Initial claims for newly contracted facilities will be processed according to the provisions of paragraphs (1), (2), and (3) of this subsection and must meet the coverage limitation of subsection (h) of this section relating to retroactive coverage. Additionally, the following filing criteria will apply.

(A) For newly contracted facilities, claims received within 60 days after the date of the contract/amended contract approval letter will be processed for payment. A copy of the contract approval letter should be submitted with any initial claims submission. The initial filing deadline(s) do not apply during this 60-day grace period.

(B) Claims received after the 60-day grace period will be subject to the full provisions of this subsection and the initial filing deadline(s) will apply.

(g)-(h) No Change.

(i) Limited **pre-Medicare** benefits for recipients are available for covered medical services performed during the **qualifying** [waiting] period required for Medicare chronic renal disease coverage (pre-Medicare waiting period). For recipients who are eligible for Medicare benefits prior to ESRD and do not have Medicare coverage because they have not applied for benefits under Title XVIII or they are not paying the necessary premiums to maintain their Medicare coverage, the pre-Medicare [waiting period] benefits from the KHP will not exceed four months from the date of the KHP eligibility effective date and will terminate the first day of the third month following the date of first chronic dialysis. **If the recipient dies during the qualifying period and prior to receiving Medicare eligibility, he/she will not be eligible for more than the pre-Medicare benefit maximum. Recipients who receive a transplant during the qualifying period and are denied Medicare coverage will not be subject to the pre-Medicare benefits limitations.**

(j)-(l) No Change.

(m) Outpatient immunosuppressive drug (ISD) benefits are available for program eligible transplant recipients. These recipients will fall into two basic categories: **recipients who are eligible for Medicare ISD benefits; and recipients who are not eligible for Medicare ISD benefits.** [Medicare eligible recipients equal to or less than one year post-transplant; Medicare eligible recipients greater than one year post-transplant and Medicare non- eligible recipients. Outpatient ISD benefits available to each category include:]

(1) Outpatient ISD benefits available to each category include the

following. [the Medicare eligible recipient equal to or less than one year post-transplant is eligible for program benefits to cover the 20% coinsurance costs not covered by the Medicare immunosuppressive drug program and are covered under the KHP's drug and transportation (D&T) benefits. These benefits are subject to the limitations listed in paragraph (3) of this subsection.]

(A) Recipients who are eligible to receive Medicare ISD benefits may receive reimbursement of the deductible and copayment for ISD, not to exceed the rate established by the program. In order for the deductible to be covered, the Medicare EOB must accompany the claim.

(B) Recipients who are not eligible for Medicare ISD benefits may receive reimbursement for ISD not to exceed the rate established by the program.

[(2) the Medicare eligible recipient more than one year post- transplant and the Medicare non-eligible recipient are eligible for the KHP cyclosporine A (CYA) benefits and D&T benefits. These benefits are subject to the limitations listed in paragraph (3) of this subsection.]

(2) [(3)] Limitations [limitations] to outpatient ISD benefits include the following.

(A) The ISD must be provided by a program approved provider [facility] unless the drug is being claimed on a patient D&T claim form.

[(B) ISD benefits will be subject to the program's $350 monthly maximum and co-pay liability requirements of KHP D&T benefits with one exception: the cyclosporine cost, when billed under the KHP's CYA benefit, is not subject to these limitations.]

(B) [(C)] All other third parties (e.g., Medicare, Medicaid, private insurance, VA, etc.) must meet their liability before the KHP will become liable for payment amounts up to the KHP allowable reimbursement rate.

(C) [(D)] Reimbursement rates and drugs covered by the ISD benefits will be determined by the department.

(D) [(E)] ISD [Cyclosporin A] benefits, in addition to the limitations referred to in subparagraphs (A)-(C) [(D)] of this paragraph, must be billed directly to the program on the appropriate claim form and the provider billing the program under the ISD [cyclosporine] benefit agrees to accept the program's payment as payment in full for the drug. [and not bill the patient for any remaining balance.]

(n) (No change.)

(o) Food and lodging benefits are available for eligible program recipients, subject to program limitations.

(1) Post transplant food and lodging benefits are available to program recipients who are required to remain near the facility for follow-up treatment following transplant surgery. The benefit begins on the day the eligible recipient is released from the hospital following successful transplant surgery and is limited to a maximum of 14 consecutive days following the release date unless the 14-day period is interrupted by a readmission to the hospital. Payment of food and lodging benefits will be limited to expenses incurred at food and lodging facilities.

(2) Food and lodging benefits are available to program recipients who are required to remain near the facility during home dialysis training. Eligible recipients training for home peritoneal dialysis can receive up to 14 days of benefits, and eligible recipients training for home hemodialysis can receive up to 30 days of benefits. The benefit days do not have to be consecutive, but must be utilized within 90 days from the start of training. Payment of food and lodging benefits will be limited to expenses incurred at food and lodging facilities.

(p)[(o)] In the event a recipient is dialyzing at a contracted facility that loses its program approval, the program will notify the recipient of this situation. The recipient will remain eligible for all program benefits except those benefits covering medical services which are provided under the contract between the department and the contracted facility. To remain eligible for the benefits which cover these contracted medical services, the recipient must transfer to another outpatient dialysis facility that has a KHP approval. Recipient benefits normally provided under contract by an approved outpatient dialysis facility are not eligible for reimbursement while the recipient is dialyzing at a nonapproved facility.

(q)[(p)] Overpayments made to or in behalf of recipients must be reimbursed to the department. Reimbursement may be made by lump sum payment or, at the department's discretion, out of the current claims due to be paid to or in behalf of the recipient. This will also apply to any person or persons who have a legal obligation to support the recipient and have received the overpayment in behalf of the recipient. An opportunity to appeal a program decision related to this subsection will be afforded to the recipient or organization involved in the overpayment at their request, in accordance with §61.11 of this title (relating to Kidney Health Program Appeals Process).

(r) [(q)] In the event a program recipient dies, payment for program benefits may be provided for services provided up to the recipient's date of death.

§61.4. Applications. Persons meeting the eligibility requirements set forth in §61.2(a)(1), (2), and (4) of this title (relating to Eligibility Requirements) must make application for benefits through a KHP contracted facility, a Medicare approved hospital licensed in Texas, or a military or Veterans Administration hospital located in Texas which has a JCAH or AOA approved renal unit.

(1) Completed application. A complete application shall consist of all of the following:

(A) a properly completed, signed, and notarized original application for program benefits, Form KHP 1 [or reapplication for benefits, Form KHP 76];

(B) a copy of the properly completed, signed, and dated Health Care Financing Administration (HCFA) Chronic Renal Disease Medical Evidence Report, HCFA Medical Form 2728-U4;

(C)-(D) (No change.)

(E) social security card (or allowable substitute):

(i) (No change.)

(ii) a copy of a Social Security Administration document [fully executed application for a replacement social security card] which verifies the social security number; or

(iii) a copy of a valid Medicare or Medicaid card if the Medicare account was established in the applicant's own social security number;

(iv) (No change.)

(2)-(3) (No change.)

(4) Applicant financial data. Applicant financial data must be provided to determine applicant co-pay liability. Eligibility for specific program benefits cannot be determined without the financial data, and claims for benefits cannot be processed for payment. [Although basic program eligibility will be determined without the financial data, specific benefit eligibility cannot be determined and claims against the benefit cannot be processed.] As an example: eligibility for D&T benefits [eligibility] cannot be determined without financial data to establish co-pay liability; therefore, D&T claims would be rejected until the financial data were provided. Also, as an example: applicants with income that is within a specified range may not qualify for D&T benefits but may be eligible for pre-Medicare benefits during

the qualifying period after satisfying a deductible for the calendar year; therefore, medical claims would also be rejected until the financial data was provided. The financial data will be provided in the appropriate section on the application for benefits, Form KHP 1. Additionally, a copy of the first page of the applicant's (or the persons legally obligated to support the applicant) IRS individual income tax return form 1040, 1040A, or 1040EZ for the most recently completed tax year will be provided, if available. Submission of the application should not be delayed if the tax form is not readily available; the applicant may provide estimated or declared income on the application for benefits, Form KHP 1 [it can be provided at a later date]. Applicants whose only source of income are Social Security supplemental income (SSI), Social Security retirement/disability income (RSDI), and/or Medicaid recipients who are not required to file a federal income tax return, may submit documentation of financial assistance and/or income/retirement benefits to the program to determine applicant co-pay liability. If the applicant's income changes from the original submission, a notarized statement explaining the change must be submitted to the program for consideration in determining the applicant's copay liability. |

(5) Provisional approval. The program may grant provisional approval for an applicant whose previous program eligibility has lapsed and if the applicant also has an outstanding debt due to prior year(s) patient reimbursement obligation, or owes money to the program because of overpayment, or has failed to provide prior year(s) financial data to the program. The applicant will be put in a suspended benefit status for 30 days or until all requested financial data and/or arrangements for payment (as approved by the program) of the debt owed to the state has been received, whichever occurs first. If the 30-day period elapses without the program receiving financial data and/or arrangement for repayment of the debt, the provisional approval will be canceled and the application for benefits will be returned to the submitting facility. Claims filed during the suspended benefits period will be held until the requested financial data and/or arrangements for repayment are received by the program, and then they will be processed. If the application for benefits is returned after the 30-day period, all claims will also be returned without processing.

(6) [(5)] Incomplete applications.

(A) An application shall be deemed incomplete for any one of the following:

(i)-(iv) (No change.)

(v) lack of legal residency documentations; or [.]

(vi) failure to provide financial data.

(B) (No change.)

(7) [(6)] Eligibility date. The KHP eligibility date will be based on the date the department receives a complete KHP application for benefits [or reapplication for benefits] as specified in this section. The KHP eligibility date will be computed as follows:

(A) 90 days prior to the date the department received a complete application [application/reapplication]; [or]

(B) the date a Texas resident is no longer considered a ward of the state;

(C) the date a Texas resident is released from a state/federal correctional/rehabilitation institution;

(D) [(B)] 30 days prior to the first dialysis treatment or transplant surgery as indicated on the HCFA 2728; or

(E) [(C)] the date Texas residency was established, whichever is later.

(8)[(D)] Corrected HCFA 2728. If the date of first dialysis or transplant surgery date is changed or corrected from that shown on the original HCFA 2728, then a copy of the corrected HCFA 2728, which was submitted to Medicare, must be provided to the KHP before any program eligibility date can be adjusted.

(9)[(E)] Request for adjustment. If the recipient or his or her authorized representative determines that the eligibility date is in error, they may request an adjustment to an earlier eligibility date. This request must be received by the program within 60 days of the date of the notice of eligibility in order to be considered.

§61.6. Documentation of Residency.

(a) Except as provided in subsection (c) of this section, an applicant may submit to the department for consideration the following documentary evidence of bona fide Texas residency: copies of three of the following documents, all in the applicant's name and current address. Exception: an applicant who is currently a Texas resident and has been approved to receive Texas Medicaid benefits and provides acceptable documentation of Texas Medicaid eligibility to the department is not required to provide additional residency verification.

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

(4) one of the documents in this paragraph may be used:

(A) a warranty deed or deed of trust to the applicant's abode;

(B) a mortgage payment receipt [receipts] from any [two] of the three months immediately preceding the date of the application;

(C) a rent payment receipt [receipts] from any [two] of the three months immediately preceding the date of the application;

(D) (No change.)

(5) a utility payment receipt [receipts] from any [two] of the three months immediately preceding the date of the application; |

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

(8) one of the documents in this paragraph may be used if the applicant's current address is imprinted on the document(s):|

(A) a [two of the three most recent] payroll or retirement check [checks] received within the three consecutive months immediately preceding the date of application;

(B)-(C) (No change.)

(D) social security supplemental income or disability income records or social security retirement benefit records.

(b) If three of the documents listed in subsection (a) of this section cannot be provided, then copies of two of the documents listed in subsection (a) of this section may be provided along with a copy of one of the following documents (it must support Texas residency):

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

(6) one of the documents in this paragraph may be used:

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

(C) a complete copy of the forms issued to the applicant by INS as evidence of application for legal residency in the United States. Such forms may include, but are not limited to, Form I687L, Form I688A, or I688 [lawful temporary entry into the United States. Such forms may include, but are not limited to Form I-90, Form I-94, Form I-120, or Form I-181 and must show a Texas address or a Texas port of entry].

(7) changes in residency and

legalization status with the INS to the program upon notification from the INS; a copy of the documents mentioned in paragraph (6)(C) of this subsection will be sufficient for reporting purposes.

(c)-(f) (No change.)

§61.7. Denial of Application; Modification, Suspension, or Termination of Patient Benefits.

(a) Persons applying for or receiving benefits from the program will/may have their application denied or their benefits modified, suspended, or terminated for any of the following reasons.

(1) Benefits will be denied, modified, suspended or terminated if:

(A) ((No change.))

(B) the person moves out of the state;

(C) the person becomes a ward of the state or an inmate in a state or federal correctional/rehabilitation institution;

(D) [(B)] the person fails or refuses to provide the periodic documentation of residency required in §61.6[(b)] of this title (relating to Documentation of Residency);

(E) [(C)] the person does not have end-stage renal disease, regains kidney function, or voluntarily stops treatment for end-stage renal disease;

(F) [(D)] the person fails or refuses to submit to the department a recipient financial status report for the purpose of determining reimbursement obligation/copay liability;

(G) [(E)] the person refuses to reimburse the department after being notified of third party benefits, recipient reimbursement obligations, or program overpayments;

(H) [(F)] the person notifies the program in writing that they no longer want to claim program benefits. Such a statement does not free the recipient, or persons with legal obligation to support the recipient, of any reimbursement obligation owing the program at the time of withdrawal;

(2) (No change.)

(b) Procedures for the denial of applications or modification, suspension, or termination of benefits.

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

(4) Within 30 days after receiving the notice mentioned in this subsection, the applicant/recipient notified or that person's authorized representative must respond to the program's notice with a written response to the program. The response must be by [certified] mail to the following address: Kidney Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Failure to respond will be deemed a waiver of the opportunity to respond to the program and a waiver of the opportunity for a hearing, and the proposed action will become final.

(5) If the applicant/recipient does respond, upon receipt of the applicant's/recipient's response, the program will affirm or reverse its proposed action in writing to the applicant/recipient (by [certified] mail), giving the reason(s) for the decision.

(6) (No change.)

§61.8. Kidney Health Care Approved Outpatient Dialysis Facilities and Out-of-State Facilities, Hospital, and Providers.

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

(c) An approved provider is:

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

(4) a business that can legally operate out-of-state and is authorized to provide services to a KHP eligible patient; or

[(5) a company which provides home dialysis supplies and can legally operate in Texas; or]

(5) [(6)] any other entity which has signed a contractual agreement with the department to provide specified services.

§61.9. Denial, Modification, Suspension, or Termination of Facility/Hospital/Provider Approval; Vendor Hold.

(a) The following are reasons for the denial, modification, suspension, or termination of program facility/hospital/provider approval. A program approved outpatient dialysis facility, out-of-state facility, hospital, or provider will have its privilege to participate in the program denied, modified, suspended, or terminated if:

(1) the facility/hospital/provider:

(A) loses Medicare approval;

(B) is excluded from participation in the Medicare program;

(C) is excluded from participation in the Medicaid program; or

(D) is excluded from participation in other state health programs;

(2)-(7) (No change.)

(8) the facility/provider fails to reimburse the program where primary liability for payment of recipient claims has not been satisfied; or

(9) (No change.)

(b)-(c) (No change.)

§61.11. Kidney Health Program Appeals Process.

(a) Any applicant/recipient, provider or facility aggrieved by the program's decision is entitled to appeal the decision to the department in accordance with §§1.51-1.55 of this title (relating to Informal Hearing Procedures). The appeal process will be in accordance with the hearing procedures as outlined in subsection (b) of this section. To initiate the appeal process, the applicant/recipient, provider, or facility must notify the department, in writing, that he/she requests a hearing on the decision. The request must be received by the department within 20 days from the receipt of the program's decision letter. Failure to provide written notice will be deemed a waiver of the opportunity for a hearing and the proposed action will become final. At their option, an applicant/recipient, provider, or facility may choose to appeal the program's decision through the program's informal appeal process as outlined in subsection (d) [(c)] of this section. When this option is used, an appeal may be a two-step process consisting of an informal appeal panel and, if necessary, an administrative hearing under the department's informal hearing procedures. To initiate the informal appeal panel process, the applicant/recipient, provider, or facility must notify the program, in writing, that he/she desires to appeal a program decision. The request must be received by the program within 30 days from the date of the program's decision letter. If the appellant disagrees with the decision of the panel, he/she may then request an administrative hearing by providing notification as outlined in this subsection.

(b)-(d) (No change.)

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

Issued in Austin, Texas, on September 18, 1989.

TRD-8908624

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

Proposed date of adoption: December 9, 1989.

For further information, please call: (512) 458-7796

Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §97.16

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

The Texas Department of Health proposes new §97.16, concerning the Texas HIV Medication Program. The new section implements the provisions of Senate Bill 959, Article III, 71st Legislature, 1989, concerning the establishment of an HIV Medication Program in Texas. The section covers eligibility for participation; priority of treatment; application process; confidentiality; payment for azidothymidine (AZT); participating pharmacies; and an appeal procedure to resolve any eligibility or funding disputes.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the section is in effect there will be fiscal implications for the state government as a result of enforcing or administering the section. The effect on state government will be a reduction in cost to the department of approximately $1.8 million dollars for each year of the first five years that the section is in effect. There is no anticipated cost to local government or small businesses. There will be no impact on local employment.

Mr. Seale also has determined that each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will that the drug AZT, and other drugs as they become approved, will continue to be available to AIDS and ARC patients for medication purposes. There will be no cost to individuals.

Written comments on the proposal may be submitted to the Texas Department of Health, HIV Medication Program, 1100 West 49th Street, Austin, Texas 78756. Comments will be accepted for 30 days after publication of the proposal in the *Texas Register*.

The new section is being proposed under Senate Bill 959, Article III, 71st Legislature, 1989; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules to implement its programs.

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 September 18, 1989.

TRD-8908621 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: December 9, 1989.

For further information, please call: (512) 458-7500

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Chapter 115. Home Health Care Agencies

Licensing and Regulation

• 25 §§115.2, 115.5, 115.8-115.10, 115.12, 115.15, 115.19

The Texas Department of Health proposes amendments to §§115.2, 115.5, 115.8, 115.10, 115.12, and 115.15 and new §115.19. The sections to be amended cover definitions, application, and issuance of temporary license for first time applicants (unregulated facilities, new agencies, and certain relocations); conditions of annual license; standards for a Class A and Class B license; license denial, suspension, or revocation; and complaints. The new section addresses the training and permitting of home health medication aides administering medications in a home health agency setting.

The amendments implement the provisions of House Bill 1466, House Bill 2117 and Senate Bill 332, 71st Legislature, 1989.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government will be an estimated additional cost of $37,500 for the first year and $32,500 for each year of the remaining four years. This cost is based on additional staff, data processing, and other operating expenses to incorporate the permitting of home health medication aides into the existing nursing home medication aide permit program. There may be fiscal implications for small businesses to comply with the sections. The utilization of home health medication aides is an optional requirement for home health agencies. The department is unable at this time to determine how many small versus large home health agency businesses will voluntarily utilize the services of a home health medication aide. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

In addition, the Texas Employment Commission has determined that this proposal will have no significant impact on local employment in Texas.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to assure adequate permitting and regulating of the activities of home health medication aides administering medications in home health agencies. The economic cost to individuals will be the initial permit fee of $25, the renewal fee of $15, and the replacement fee of $5.00. The individual will also incur the cost of approximately $150 to enroll in a medication aide program. Continuing education courses will cost the individual approximately $15.

Comments on the proposal may be submitted to Nance Kerrigan, Director, Health Facility Licensure and Certification Division, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245. Public comments will be accepted for 30 days after publication of the sections in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Wednesday, October 18, 1989, in the Texas Department of Health auditorium, 1100 West 49th Street, Austin.

The amendments and new section are proposed under Texas Civil Statutes, Article 4447u, §4, which provide the Texas Board of Health with the authority to adopt rules covering home health care agencies; House Bill 2117, 71st Legislature, 1989, concerning the licensing and regulation of home health care agencies and permits to administer medication to patients of home health care agencies; House Bill 1466, 71st Legislature, 1989, concerning criminal history records; Senate Bill 332, 71st Legislature, 1989, concerning the requirements for criminal history checks of nurse trainees for and employees of certain facilities that provide services to the elderly or disabled; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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

Certified agency–A person who provides a home health service and is certified [A home health agency which holds a current letter of approval signed] by an official of the Department of Health and Human Services indicating [which indicates] compliance with conditions of participation in the Social Security Act, Title XVIII.

Home health medication aide–A person permitted under Texas Civil Statutes, Article 4447u, §9a.

Home health service–The provision of a health service for pay or other consideration in a patient's residence , but does not include the provision of care under an attendant care program administered by the Texas Department of Human Services.

§115.5. Application and Issuance of Temporary License for First Time Applicants (Unregulated Facilities, New Agencies and Certain Relocations).

(a) (No change.)

(b) Upon written request, the director shall furnish a person with an application form for a home health agency license. The applicant shall be at least 18 years of age, and shall submit to the director a separate and accurate application form for each license, required documentation, and the license fee. The applicant shall apply for a Class A or Class B license or Class A or Class B branch office license and indicate whether hospice service or home dialysis designation is requested. The applicant shall retain a copy of all documentation that is submitted to the director. The address provided on the application must be the address from which the agency will be operating.

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

(10) If a person is in the process of becoming certified by the Department of Health and Human Services so as to qualify as a certified agency, the person may be issued a temporary Class A home health service license to be effective in accordance with this chapter.

(c)-(g) (No change.)

§115.8. Conditions of Annual License.

(a)-(h) (No change.)

(i) A Class A or Class B home health agency shall comply with the Human Resources Code, Title 6, Chapter 106, requiring criminal conviction checks of certain home health agency employees, and the rules adopted by the Texas Department of Human Services under 40 TAC Chapter 106.

§115.9. Standards for a Class A License.

(a) A Class A agency shall meet the conditions of participation as either a home health agency or a hospice in the insurance program for the aged within the meaning of the Social Security Act and the regulations adopted thereunder (42 Code of Federal Regulations, §405.1201 et seq., or §418.1 et seq.), which regulations are adopted by reference herein for all purposes. Copies of the regulations adopted by reference in this section are indexed and filed in the Health Facility Licensure and Certification Division. Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(b) Home health medication aides may be utilized in a Class A home health agency in accordance with §115.19 of this title (relating to Home Health Medication Aides).

(c) If there is a direct conflict between the language of §115.19 of this title (relating to Home Health Medication Aides) and federal regulations, the requirements which are more stringent shall apply.

§115.10. Standards for a Class B License.

(a) (No change.)

(b) Organizational structure and operational policies of the agency must be clearly stated in writing. It must include the lines of authority and delegation of responsibility down to the patient care level and the services provided.

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

(3) A personnel record shall be maintained on each employee. A personnel record should include, as appropriate, the following: job description; qualifications; application for employment; verification of references, job experience, educational requirements, [and] license **, and permits**; performance evaluation; and disciplinary actions or letters of commendation. All information should be kept current. In lieu of the job description and qualifications for employment, the personnel record may include a statement signed by the employee that the employee has read the job description and qualifications for the position accepted. The original personnel record must be maintained in the parent agency.

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

(c) The agency shall maintain a current roster of patients and have a clinical record for each patient which is maintained according to professional standards.

(1) A clinical record shall contain, as applicable, appropriate identifying information; name of practitioner; treatment plan which shall include medication, dietary, treatment, and activity orders; initial assessment and patient care plan; clinical and progress notes (clinical notes are written the day service is rendered and incorporated no less often than weekly); medication sheet; medication administration records (if applicable); record of patient care conference; record of supervisory visits; **written statements regarding consumer complaints; acknowledgement of receipt of a copy of the Human Resources Code, Chapter 102, Rights of the Elderly (as applicable); patient request for and acknowledgment of home health medication aides;** and discharge summary. All entries shall be signed and dated by the person making the entry and/or supervisory personnel as is necessary.

(2)-(3) (No change.)

(d)-(g) (No change.)

(h) Medications will be administered by an agency-employed registered nurse; [or by] a licensed vocational nurse, **[,] an individual who holds a current permit issued under §115.19 of this title (relating to Home Health Medication Aides) and acts under the delegated authority of a person who holds a current license under state law which authorizes the licensee to administer medications; or an individual who performs duties as a qualified dialysis technician under §115. 18 of this title (relating to Standards for Home Dialysis Designation). Administration of** [and only if] such medication **must** be [is] ordered by the patient's practitioner. **The practitioner's orders must state that medications may be administered by a home health medication aide.**

(1) (No change.)

(2) Upon the request by a patient and/or his family for administration of medications by a home health medication aide, the registered nurse may assign a home health medication aide to administer medications.

(3) The clinical records of a patient utilizing a home health medication aide shall include the following documentation:

(A) a request signed by the patient and/or family for assignment of a home health medication aide; and

(B) a statement signed by the patient and/or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(4)[(2)] A current medication sheet and medication administration records will be maintained and will be incorporated into the clinical record. **The supervising registered nurse shall prepare an assignment sheet for each home health medication aide.** Notation will be made in clinical notes of medications not given and the reason. Any untoward action will be be reported to a supervisor and documented.

(i) An agency shall provide at least one health service. All services shall bve rendered and supervised by qualified personnel.

(1)-(8) (No change.)

(9) If home health medication aide services are provided, a home health medication aide shall be employed by the agency to provide home health medication aide services and a registered nurse shall be employed by or under contract with the agency to perform the initial assessment; prepare the patient care plan; establish the medication sheet, medication record, and medication aide assignment sheet; and supervise the home health medication aide. The registered nurse shall supervise the home health medication aide on-site at least once every 14 days and more frequently if the patient's condition and medication changes.

§115.12. License, Denial, Suspension, or Revocation.

(a) (No change.)

(b) The department may take action under subsection (a) of this section:

(1) if a Class A agency's provider agreement under the Social Security Act, Title XVIII, has been terminated by the certifying body, Health Care Financing Administration, or if the agency withdraws its certification or its request for certification, **,the department may suspend or revoke the license of a Class A home health agency that fails to maintain its certification qualifying the agency as a certified agency. A Class A home health agency that submits a request for a hearing as provided by this section is governed by the requirements of the statute or this chapter relating to a Class B home health agency until suspension or revocation is**

finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court; [or]

(2) for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the agency pursuant to this chapter; or [.]

(3) if the agency fails to comply with the Human Resources Code, Title 6, Chapter 106, and the rules adopted by the Texas Department of Human Services under 40 TAC Chapter 106.

(c) The department may suspend or revoke an existing valid license or existing home health medication aide permit, [or] disqualify a person from receiving a license or a home health medication aide permit, or deny to a person the opportunity to be examined for a permit because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(1) In determining whether a criminal conviction directly relates to the license or the home health medication aide permit [an occupation], the department shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for requiring a license or permit to engage in the occupation. [;] The following felonies and misdemeanors relate to the licensing of an agency or the permitting of a home health medication aide because these criminal offenses indicate an inability or a tendency to be unable to own or operate an agency or to perform as a home health medication aide:

(i) the misdemeanor of knowingly or intentionally acting as an agency or as a home health medication aide without an appropriate license or permit issued under the statute;

(ii) a misdemeanor and/or felony offense involving moral turpitude;

(iii) a misdemeanor and/or felony offense under various titles of the Texas Penal Code:

(I) Title 5, concerning offenses against the person;

(II) Title 7, concerning offenses against property;

(III) Title 9, concerning offenses against public order and decency;

(IV) Title 10, concerning offenses against public health, safety, and morals; and

(V) Title 4, concerning offenses of attempting or conspiring to commit any of the offenses in clauses (i)-(iii) of this subparagraph;

(iv) the misdemeanors and felonies listed in clauses (i)-(iii) of this subparagraph. The misdemeanors and felonies are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the statute and this chapter;

(C) the extent to which a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an agency [the licensed occupation] or the home health medication aide.

(2) (No change.)

(3) If the department denies, suspends, or revokes a license or permit under this section, the director or the program administrator of the Home Health Medication Aide Permit Program, as appropriate, shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the department and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and

(D) of the earliest date that the person may appeal.

(d) Upon a licensee's or permit holder's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license or permit shall be revoked.

(e) If the director proposes to deny, suspend, or revoke a license or the program administrator for the Home Health Medication Aide Permit Program proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, the director shall notify the agency and the program administrator shall notify the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offer the agency ,permit holder, or home health medication aide program an opportunity for a hearing.

(1) The agency ,permit holder, or home health medication aide program must request a hearing within 30 days of receipt of the notice.

(2) The request for home health licensure hearing must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. The request for a home health medication aide permit or a home health medication aide program hearing must be in writing and submitted to the program administrator, Home Health Medication Aide Permit Program, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §1.21-1.34 of this title (relating to Formal Hearing Procedures).

(4) If the agency, permit holder, or home health medication aide program does not request a hearing, in writing, within 30 days of receipt of the notice, the agency, permit holder, or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(f)-(i) (No change.)

(j) If the department suspends a license or home health medication aide permit, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The authorized representative of the department shall investigate prior to making a determination.

(1) During the time of suspension, the suspended license or permit holder shall return his or her license or permit to the department.

(2) If a suspension overlaps a renewal date, the suspended license or permit holder may comply with the renewal procedures in this chapter; however, the department may not renew the license or permit until the department determines that the reason for suspension no longer exists.

(k) If the department revokes or does not renew a license or permit, a person may reapply for a license or per-

mit by complying with the requirements and procedures in this chapter at the time of reapplication.

(1) The department may refuse to issue a license or permit if the reason for revocation or nonrenewal continues to exist.

(2) Upon revocation or nonrenewal, a license or permit holder shall return the license or permit to the department.

§115.15. Complaints.

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

(c) Procedures concerning complaints about home health medication aides shall be as follows.

(1) A person wishing to file a complaint against a home health medication aide permit holder, home health medication aide program, or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the program administrator of the Home Health Medication Aide Program. The mailing address is Home Health Medication Aide Permit Program, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7503.

(2) Upon receipt of a complaint, the program administrator shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the program administrator before further action can be taken. If the complaint is made by a visit to the program administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(3) Anonymous complaints may be investigated by the department if the complainant provides sufficient information.

(4) If the program administrator determines that the complaint does not come within the department's jurisdiction, the program administrator shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(5) The program administrator, on behalf of the department, shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(6) If the program administrator determines that there are insufficient grounds to support the complaint, the program administrator shall dismiss the complaint and give written notice of the dismissal to the home health medication aide permit holder or person against whom the complaint has been filed and the complainant.

(7) If the program administrator determines that there are sufficient grounds to support the complaint, the program administrator may propose to deny, suspend, emergency suspend, revoke, or not renew a home health medication aide permit, or rescind a home health medication aide program approval.

§115.19. Home Health Medication Aides.

(a) General law. A person may not administer medication to a patient unless the person:

(1) holds a current license under state law which authorizes the licensee to administer medication;

(2) holds a current permit issued under this section and acts under the delegated authority of a person who holds a current license under state law which authorizes the licensee to administer medication; or

(3) performs duties of a qualified dialysis technician within the scope authorized under §115.18 of this title (relating to Standards for Home Dialysis Designation).

(b) Required actions. A permit holder must:

(1) function under the direct supervision of a registered nurse;

(2) function in accordance with applicable law and this chapter relating to administration of medication and operation of the home health agency;

(3) comply with department rules applicable to personnel used in a home health agency; and

(4) comply with this section and §115.13 of this title (relating to Home Health Aides; Training Course; Duties) if the person will be used as a home health aide and a home health medication aide.

(c) Permitted actions. A permit holder is permitted to:

(1) observe and report to the agency's registered nurse reactions and side effects to medication shown by a patient;

(2) take and record vital signs prior to the administration of medication which could affect or change the vital signs;

(3) administer regularly prescribed medication which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide shall document the administered medication in the patient's clinical record;

(4) administer oxygen per nasal canula or a non-sealing face mask only in emergency. Immediately after the emergency, the permit holder shall verbally notify the supervising registered nurse and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication; and

(6) administer medications only from the original container.

(d) Prohibited actions. Permit holders shall not:

(1) administer medication by the injection route including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing (IPPB) treatment or other medication inhalation treatments;

(3) administer previously ordered pro re nata (PRN) medication unless authorization is obtained from the agency's registered nurse. If authorization is obtained the permit holder must:

(A) document in the patient's records symptoms indicating the need for medication and the time the symptoms occurred;

(B) document in the patient's records that the agency's registered nurse was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;

(C) obtain permission to administer the medication each time the symptoms occur in the patient; and

(D) insure that the patient's clinical record is co-signed by the registered nurse who gave permission within seven days of incorporation of the notes into the clinical record.

(4) administer the initial dose of a medication that has not been previously administered to a patient. Whether a medication has been previously administered shall be determined by the patient's current clinical records;

(5) calculate a patient's medica-

tion doses for administration, except that the permit holder may:

(A) measure a prescribed amount of a liquid medication to be administered; or

(B) break a tablet for administration to a patient provided the registered nurse has calculated the dosage. The patient's medication administration record shall accurately document how the tablet must be altered prior to administration.

(6) crush medication unless authorization has been given in the original physician's order or obtained from the agency's registered nurse. The authorization to crush the specific medication shall be documented on the patient's medication administration record;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(9) order a patient's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed from and labeled by the pharmacy with all required information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications; or

(13) violate any provision of the statute or of this chapter.

(e) Applicant qualifications. Each applicant for a permit issued under the statute must complete a training program. Prior to enrollment in a training program and prior to application for a permit under this section, all persons:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of a high school or have an equivalent diploma; and

(5) must have:

(A) satisfactorily completed an approved home health aide training program under §115.13 of this title (relating to Home Health Aides; Training Course; Duties); or

(B) completed a competency evaluation program or training and competency evaluation program approved under the Omnibus Budget Reconciliation Act of 1987.

(f) Nursing students. A person who is attending or has attended an accredited Texas school of nursing and who does not hold a license to practice professional or vocational nursing in Texas meets the training requirement for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school which cover the department's curriculum for a home health medication aide training program;

(3) submits a statement on the form provided by the department which is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified under paragraph (2) of this subsection. The administrator is responsible for determining that the courses to which he or she certifies cover the department's curriculum. The statement shall be submitted with the person's application for a permit under this section; and

(4) complies with subsection (g)(1), (2), and (4)-(9) of this section.

(g) Nursing graduates. A person who is a graduate of an accredited Texas school of nursing and who does not hold a license to practice professional or vocational nursing in Texas meets the training requirement for issuance of a permit under this section; provided, however, the date of graduation from the nursing school must have been no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) An official application form shall be submitted to the department by the graduate. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application shall be accompanied by the permit application fee.

(3) The applicant must include an official transcript documenting graduation from an accredited Texas school of nursing.

(4) The department shall acknowledge receipt of the application by forwarding to the applicant a copy of this chapter and the department's open book examination.

(5) The applicant shall complete the open book examination and return it within 45 days to the department.

(6) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department.

(7) An open book or written examination shall not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, the department will evaluate all application documents submitted by the applicant.

(9) The department shall notify the applicant in writing of the examination results.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application, may request a waiver of the training program requirement.

(1) An official application form shall be submitted to the department by the applicant. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application shall be accompanied by the permit application fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority (law, act, code, section, or otherwise) for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) The department shall acknowledge receipt of the application by forwarding to the applicant a copy of this chapter and the department's open book examination.

(5) The department may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant shall complete the department's open book examination and return it within 45 days to the department.

(7) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department.

(8) An open book or written examination shall not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, the department

will evaluate all application documents submitted by the applicant.

(10) The department shall notify the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to the department, no later than 30 days after enrollment in a training program, all required information and documentation on official department forms.

(1) The department will not consider an application as officially submitted until the applicant submits the nonrefundable combined permit application and examination fee payable to the Texas Department of Health. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form shall contain the following application material which is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met prior to the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to the department; and

(F) the applicant's signature which has been dated and notarized.

(3) A certified copy of the applicant's high school graduation diploma or transcript or an equivalent GED diploma shall be submitted unless the applicant is applying under subsection (g) of this section.

(j) Examination. A written examination shall be given by the department to each applicant at a site determined by the department.

(1) No final examination shall be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) The applicant shall be tested on the subjects taught in the training program curricula and clinical experience. The examination shall cover an applicant's knowledge of accurate and safe drug therapy to an agency's clients.

(3) A training program shall notify the department at least four weeks prior to its requested examination date.

(4) The department shall determine the passing grade on the examination.

(5) An applicant who fails the examination shall be notified in writing by the department.

(A) An applicant under subsection (e) of this section may be given a subsequent examination, without additional payment of a fee, upon the applicant's written request to the department.

(B) A subsequent examination shall be completed within 45 days from the date of the failure notification. The site of the examination shall be determined by the department.

(C) Another examination shall not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(6) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to the department. The examination shall be completed within 45 days from the date of the originally scheduled examination. The rescheduled examination shall be at a site determined by the department.

(7) An applicant, whose application for a permit will be disapproved under subsection (k) of this section, is ineligible to take the examination.

(k) Determination of eligibility. The department shall receive and approve or disapprove all applications. Notices of application approval, disapproval or deficiency shall be in accordance with subsection (q) of this section.

(1) An application for a permit shall be disapproved if the person has:

(A) not met the requirements of subsections (e)-(i) of this section, if applicable;

(B) failed to pass the examination prescribed by the department as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by the department;

(D) violated or conspired to violate the statute or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a permit holder as set out in §115.12 of this title (relating to License Denial, Suspension, or Revocation).

(2) If, after review, the department determines that the application should not be approved, the program administrator shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §115.12 of this title (relating to License Denial, Suspension, or Revocation).

(l) Permit renewal. Home health medication aides shall comply with the following permit renewal requirements.

(1) When issued, a permit is valid until the end of the calendar year (December 31st).

(2) A permit holder must renew the permit annually.

(3) The renewal date of a permit shall be the last day of December.

(4) Each permit holder is responsible for renewing the permit before the expiration date. Failure to receive notification from the department prior to the expiration date of the permit shall not excuse failure to file for timely renewal.

(5) A permit holder must complete a seven clock hour continuing education program approved by the department prior to expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the permit holder must begin earning approved continuing education hours.

(6) The department shall deny renewal of the permit of a permit holder who is in violation of the statute or this chapter at the time of application for renewal.

(7) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 days prior to the expiration date of a permit, the department will send to the permit holder at the address in the department's records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form which the permit holder must complete and return with the required re-

newal fee.

(B) The renewal form shall include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder and notarized.

(C) The department shall issue a renewal permit card to a permit holder who has met all requirements for renewal.

(D) A permit shall not be renewed if the permit holder does not complete the required seven-hour continuing education requirement. Successful completion shall be determined by the student's instructor. An individual who does not meet the continuing education requirement shall complete a new program, application, and examination in accordance with the requirements of this section.

(8) A person whose permit has expired for not more than two years may renew the permit by submitting to the department:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, prior to expiration of the permit, seven hours in an approved continuing education program as required in subsection (a)(5) of this section.

(9) A permit that is not renewed during the two years after expiration may not be renewed.

(m) Changes.

(1) Notification of changes shall be reported to the department within 30 days after a change of address or name.

(2) The department will replace a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is as follows:

(A) combined permit application and examination fee - $25;

(B) renewal fee - $15; and

(C) permit replacement fee - $5.00

(2) All fees are nonrefundable.

(3) An applicant whose personal check for the combined permit application and examination fee is not honored by the financial institution may reinstate the application by remitting to the department a money order or cashier's check for the amount within 30 days of the date of the applicant's receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) A permit holder whose personal check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the licensee's receipt of the department's notice. If proper payment is not received, the permit shall not be renewed. If a renewal card has already been issued, it shall be voided.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Education Agency which desires to offer a training program shall file an application for approval on an official form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on official forms and supporting documentation must be originals.

(B) The application shall include:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list of instructors and any other person responsible for the conduct of the program. The list must include addresses and telephone numbers for each instructor; and

(v) an outline of the program content and curriculum if the curriculum covers more than the department's established curricula.

(C) The department may conduct an inspection of the classroom site.

(D) Notice of approval or proposed disapproval of the application will be given to the program within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with requirements of the statute or this chapter, the reasons for disapproval shall be given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within 10 days of receipt of the notice of the proposed disapproval. The hearing shall be in accordance with §115.12 of this title (relating to License Denial, Suspension, or Revocation) and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program shall include, but shall not be limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the patient's clinical records, including PRN medications;

(E) minimum licensing standards for home health agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the home health agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of permit holders in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health patients; and

(K) the provision of this chapter.

(3) The program shall consist of 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, 10 hours of clinical observation and skills awareness under a licensed nurse in a home health agency, and 10 more hours in the return skills demonstration laboratory in the preceding order. A classroom or laboratory hour shall constitute 50 clock minutes of actual classroom or laboratory time. Clinical observation may be supervised by appropriate personnel in the home health agency.

(A) Class time shall not exceed four hours in a 24-hour period.

(B) The completion date of the program shall be a minimum of 60 days and a maximum of 180 days from the starting date of the program.

(C) Each program shall follow the curricula established by the department.

(4) At least seven days prior to the commencement of each program, the coordinator shall notify the department in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by the department prior to the program's effective date of the change.

(6) The program instructors of the classroom hours shall be a registered nurse and registered pharmacist.

(A) The nurse instructor shall have a minimum of two years of full-time experience in caring for the elderly, chronically ill, and/or pediatric patients or have been employed full-time for a minimum of two years with a home health agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor shall have a minimum of one year of experience and be currently employed as a pharmacist.

(7) The coordinator shall provide clearly defined and written policies regarding each student's clinical observation to the student, the administrator and the director of nursing of the home health agency used for the clinical observation.

(A) The clinical observation shall be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of a registered nurse. A student may not actually administer medication during the clinical observation.

(B) The coordinator shall be responsible for final evaluation of the student's clinical observation.

(8) Each program shall issue to each student, upon successful completion of the program, a certificate of completion, which shall include the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Each program shall inform the department of the final grade results for each student within 15 days of completion of the course. The official department class roster form shall be used and signed by the coordinator.

(p) Continuing education. The continuing education training program is as follows.

(1) The program shall consist of at least seven clock hours of classroom instruction.

(2) The instructors shall meet the requirements in subsection (o)(6) of this section.

(3) Each program shall follow the curricula established by the department.

(4) Each program shall inform the department of the name of each permit holder who completes the course within 15 days. The official department class roster form shall be used and signed by the coordinator.

(q) Processing procedures. The department shall comply with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of an application for a home health medication aide permit - 14 working days; and

(B) letter of application or renewal deficiency - 14 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit - 90 days;

(B) the letter of denial for a permit - 90 days; and

(C) the issuance of a renewal permit - 20 days.

(3) In the event an application is not processed in the time period stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement shall be made to the program administrator of the Home Health Medication Aide Permit Program. If the program administrator of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period is considered to exist if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the program administrator of the Home Health Medication Aide Permit Program, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The program administrator of the Home Health Medication Aide Permit Program shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner shall provide written notice of the commissioner's decision to the applicant and the program administrator of the Home Health Medication Aide Permit Program. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in

favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(6) The time periods for contested cases related to the denial of initial home health medication aide permits or renewal permits are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

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 September 19, 1989.

TRD-8908704 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: December 9, 1989.

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

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Chapter 115. Home Health Care Agencies

Licensing and Regulation

- **25 §§115.2, 115.5, 115.8-115.10, 115.12, 115.15, 115.19**

The Texas Department of Health proposes amendments to §§115.2, 115.5, 115.8, 115.10, 115.12, and 115.15 and new §115.19. The sections to be amended cover definitions, application, and issuance of temporary license for first time applicants (unregulated facilities, new agencies, and certain relocations); conditions of annual license; standards for a Class A and Class B license; license denial, suspension, or revocation; and complaints. The new section addresses the training and permitting of home health medication aides administering medications in a home health agency setting.

The amendments implement the provisions of House Bill 1466, House Bill 2117 and Senate Bill 332, 71st Legislature, 1989.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period the proposed sections are 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 additional cost of $37,500 for the first year and $32,500 for each year of the remaining four years. This cost is based on additional staff, data processing, and other operating expenses to incorporate the permitting of home health medication aides into the existing nursing home medication aide permit program. There may be fiscal implications for small businesses to comply with the sections. The utilization of home health medication aides is an optional requirement for home health agencies. The department is unable at this time to determine how many small versus large home health agency businesses will voluntarily utilize the services of a home health medication aide. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

In addition, the Texas Employment Commission has determined that this proposal will have no significant impact on local employment in Texas.

Mr. Seale also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to assure adequate permitting and regulating of the activities of home health medication aides administering medications in home health agencies. The economic cost to individuals will be the initial permit fee of $25, the renewal fee of $15, and the replacement fee of $5.00. The individual will also incur the cost of approximately $150 to enroll in a medication aide program. Continuing education courses will cost the individual approximately $15.

Comments on the proposal may be submitted to Nance Kerrigan, Director, Health Facility Licensure and Certification Division, 1100 W. 49th Street, Austin, Texas 78756, (512) 458-7245. Public comments will be accepted for 30 days after publication of the sections in the *Texas Register*. In addition, a public hearing will be held at 9 a.m., Wednesday, October 18, 1989, in the Texas Department of Health auditorium, 1100 West 49th Street, Austin.

The amendments and new section are proposed under Texas Civil Statutes, Article 4447u, §4, which provide the Texas Board of Health with the authority to adopt rules covering home health care agencies; House Bill 2117, 71st Legislature, 1989, concerning the licensing and regulation of home health care agencies and permits to administer medication to patients of home health care agencies; House Bill 1466, 71st Legislature, 1989, concerning criminal history records; Senate Bill 332, 71st Legislature, 1989, concerning the requirements for criminal history checks of nurse trainees for and employees of certain facilities that provide services to the elderly or disabled; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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

Certified agency–A **person who provides a home health service and is certified** [A home health agency which holds a current letter of approval signed] by an official of the Department of Health and Human Services **indicating** [which indicates] compliance with conditions of participation in the Social Security Act, Title XVIII.

Home health medication aide–A person permitted under Texas Civil Statutes, Article 4447u, §9a.

Home health service–The provision of a health service for pay or other consideration in a patient's residence , **but does not include the provision of care under an attendant care program administered by the Texas Department of Human Services.**

§115.5. Application and Issuance of Temporary License for First Time Applicants (Unregulated Facilities, New Agencies and Certain Relocations).

(a) (No change.)

(b) Upon written request, the director shall furnish a person with an application form for a home health agency license. The applicant shall be at least 18 years of age, and shall submit to the director a separate and accurate application form for each license, required documentation, and the license fee. The applicant shall apply for a Class A or Class B license or Class A or Class B branch office license and indicate whether hospice service or home dialysis designation is requested. The applicant shall retain a copy of all documentation that is submitted to the director. The address provided on the application must be the address from which the agency will be operating.

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

(10) If a person is in the process of becoming certified by the Department of Health and Human Services so as to qualify as a certified agency, the person may be issued a temporary Class A home health service license to be effective in accordance with this chapter.

(c)-(g) (No change.)

§115.8. Conditions of Annual License.

(a)-(h) (No change.)

(i) A Class A or Class B home health agency shall comply with the Human Resources Code, Title 6, Chapter 106, requiring criminal conviction checks of certain home health agency employees, and the rules adopted by the Texas Department of Human Services under 40 TAC Chapter 106.

§115.9. Standards for a Class A License.

(a) A Class A agency shall meet the conditions of participation as either a home health agency or a hospice in the insurance program for the aged within the meaning of the Social Security Act and the regulations adopted thereunder (42 Code of Federal Regulations, §405.1201 et seq., or §418.1 et seq.), which regulations are adopted by reference herein for all purposes. Copies of the regulations adopted by reference in this section are indexed and

filed in the Health Facility Licensure and Certification Division. Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for public inspection during regular working hours.

(b) Home health medication aides may be utilized in a Class A home health agency in accordance with §115.19 of this title (relating to Home Health Medication Aides).

(c) If there is a direct conflict between the language of §115.19 of this title (relating to Home Health Medication Aides) and federal regulations, the requirements which are more stringent shall apply.

§115.10. Standards for a Class B License.

(a) (No change.)

(b) Organizational structure and operational policies of the agency must be clearly stated in writing. It must include the lines of authority and delegation of responsibility down to the patient care level and the services provided.

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

(3) A personnel record shall be maintained on each employee. A personnel record should include, as appropriate, the following: job description; qualifications; application for employment; verification of references, job experience, educational requirements, [and] license , and permits; performance evaluation; and disciplinary actions or letters of commendation. All information should be kept current. In lieu of the job description and qualifications for employment, the personnel record may include a statement signed by the employee that the employee has read the job description and qualifications for the position accepted. The original personnel record must be maintained in the parent agency.

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

(c) The agency shall maintain a current roster of patients and have a clinical record for each patient which is maintained according to professional standards.

(1) A clinical record shall contain, as applicable, appropriate identifying information; name of practitioner; treatment plan which shall include medication, dietary, treatment, and activity orders; initial assessment and patient care plan; clinical and progress notes (clinical notes are written the day service is rendered and incorporated no less often than weekly); medication sheet; medication administration records (if applicable); record of patient care conference; record of supervisory visits; written statements regarding consumer' complaints; acknowledgement of receipt of a copy of the Human Resources Code, Chapter 102, Rights of the Elderly (as applicable); patient request for and acknowledgment of home health medication aides; and discharge summary. All entries shall be signed and dated by the person making the entry and/or supervisory personnel as is necessary.

(2)-(3) (No change.)

(d)-(g) (No change.)

(h) Medications will be administered by an agency-employed registered nurse; [or by] a licensed vocational nurse, [,] an individual who holds a current permit issued under §115.19 of this title (relating to Home Health Medication Aides) and acts under the delegated authority of a person who holds a current license under state law which authorizes the licensee to administer medications; or an individual who performs duties as a qualified dialysis technician under §115. 18 of this title (relating to Standards for Home Dialysis Designation). Administration of [and only if] such medication must be [is] ordered by the patient's practitioner. The practitioner's orders must state that medications may be administered by a home health medication aide.

(1) (No change.)

(2) Upon the request by a patient and/or his family for administration of medications by a home health medication aide, the registered nurse may assign a home health medication aide to administer medications.

(3) The clinical records of a patient utilizing a home health medication aide shall include the following documentation:

(A) a request signed by the patient and/or family for assignment of a home health medication aide; and

(B) a statement signed by the patient and/or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(4)[(2)] A current medication sheet and medication administration records will be maintained and will be incorporated into the clinical record. The supervising registered nurse shall prepare an assignment sheet for each home health medication aide. Notation will be made in clinical notes of medications not given and the reason. Any untoward action will be be reported to a supervisor and documented.

(i) An agency shall provide at least one health service. All services shall bve rendered and supervised by qualified personnel.

(1)-(8) (No change.)

(9) If home health medication aide services are provided, a home health medication aide shall be employed by the agency to provide home health medication aide services and a registered nurse shall be employed by or under contract with the agency to perform the initial assessment; prepare the patient care plan; establish the medication sheet, medication record, and medication aide assignment sheet; and supervise the home health medication aide. The registered nurse shall supervise the home health medication aide on-site at least once every 14 days and more frequently if the patient's condition and medication changes.

§115.12. License, Denial, Suspension, or Revocation.

(a) (No change.)

(b) The department may take action under subsection (a) of this section:

(1) if a Class A agency's provider agreement under the Social Security Act, Title XVIII, has been terminated by the certifying body, Health Care Financing Administration, or if the agency withdraws its certification or its request for certification, ,the department may suspend or revoke the license of a Class A home health agency that fails to maintain its certification qualifying the agency as a certified agency. A Class A home health agency that submits a request for a hearing as provided by this section is governed by the requirements of the statute or this chapter relating to a Class B home health agency until suspension or revocation is finally determined by the department or, if the license is suspended or revoked, until the last day for seeking review of the department order or a later date fixed by order of the reviewing court; [or]

(2) for fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the agency pursuant to this chapter; or [.]

(3) if the agency fails to comply with the Human Resources Code, Title 6, Chapter 106, and the rules adopted by the Texas Department of Human Services under 40 TAC Chapter 106.

(c) The department may suspend or revoke an existing valid license or existing home health medication aide permit, [or] disqualify a person from receiving a license or a home health medication aide permit, or deny to a person the opportunity to be examined for a permit because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed occupation.

(1) In determining whether a criminal conviction directly relates to the license or the home health medication aide permit [an occupation], the department shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for requiring a license or permit to engage in the occupation. [;] **The following felonies and misdemeanors relate to the licensing of an agency or the permitting of a home health medication aide because these criminal offenses indicate an inability or a tendency to be unable to own or operate an agency or to perform as a home health medication aide:**

(i) the misdemeanor of knowingly or intentionally acting as an agency or as a home health medication aide without an appropriate license or permit issued under the statute;

(ii) a misdemeanor and/or felony offense involving moral turpitude;

(iii) a misdemeanor and/or felony offense under various titles of the Texas Penal Code:

(I) Title 5, concerning offenses against the person;

(II) Title 7, concerning offenses against property;

(III) Title 9, concerning offenses against public order and decency;

(IV) Title 10, concerning offenses against public health, safety, and morals; and

(V) Title 4, concerning offenses of attempting or conspiring to commit any of the offenses in clauses (i)-(iii) of this subparagraph;

(iv) the misdemeanors and felonies listed in clauses (i)-(iii) of this subparagraph. The misdemeanors and felonies are not inclusive in that the department may consider other particular crimes in special cases in order to promote the intent of the statute and this chapter;

(C) the extent to which a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an agency [the licensed occupation] or the home health medication aide.

(2) (No change.)

(3) If the department denies, suspends, or revokes a license or permit under this section, the director or the program administrator of the Home Health Medication Aide Permit Program, as appropriate, shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, for review of the evidence presented to the department and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the department's action is final and appealable; and

(D) of the earliest date that the person may appeal.

(d) Upon a licensee's or permit holder's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license or permit shall be revoked.

(e) If the director proposes to deny, suspend, or revoke a license or the program administrator for the Home Health Medication Aide Permit Program proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, the director shall notify the agency and the program administrator shall notify the permit holder or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offer the agency ,permit holder, or home health medication aide program an opportunity for a hearing.

(1) The agency ,permit holder, or home health medication aide program must request a hearing within 30 days of receipt of the notice.

(2) The request for home health licensure hearing must be in writing and submitted to the Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. **The request for a home health medication aide permit or a home health medication aide program hearing must be in writing and submitted to the program administrator, Home Health Medication Aide Permit Program, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.**

(3) A hearing shall be conducted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and §1.21-1.34 of this title (relating to Formal Hearing Procedures).

(4) If the agency, permit holder, or home health medication aide program does not request a hearing, in writing, within 30 days of receipt of the notice, the agency, permit holder, or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action shall be taken.

(f)-(i) (No change.)

(j) If the department suspends a license or home health medication aide permit, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. The authorized representative of the department shall investigate prior to making a determination.

(1) During the time of suspension, the suspended license or permit holder shall return his or her license or permit to the department.

(2) If a suspension overlaps a renewal date, the suspended license or permit holder may comply with the renewal procedures in this chapter; however, the department may not renew the license or permit until the department determines that the reason for suspension no longer exists.

(k) If the department revokes or does not renew a license or permit, a person may reapply for a license or permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(1) The department may refuse to issue a license or permit if the reason for revocation or nonrenewal continues to exist.

(2) Upon revocation or nonrenewal, a license or permit holder shall return the license or permit to the department.

§115.15. Complaints.

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

(c) Procedures concerning complaints about home health medication aides shall be as follows.

(1) A person wishing to file a complaint against a home health medication aide permit holder, home health medication aide program, or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the program administrator of the Home Health Medication Aide Program. The mailing address is Home Health Medication Aide Permit Program, Professional Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7503.

(2) Upon receipt of a complaint, the program administrator shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the program administrator before further action can be taken. If the complaint is made by a visit to the program administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(3) Anonymous complaints may be investigated by the department if the complainant provides sufficient information.

(4) If the program administrator determines that the complaint does not come within the department's jurisdiction, the program administrator shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(5) The program administrator, on behalf of the department, shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(6) If the program administrator determines that there are insufficient grounds to support the complaint, the program administrator shall dismiss the complaint and give written notice of the dismissal to the home health medication aide permit holder or person against whom the complaint has been filed and the complainant.

(7) If the program administrator determines that there are sufficient grounds to support the complaint, the program administrator may propose to deny, suspend, emergency suspend, revoke, or not renew a home health medication aide permit, or rescind a home health medication aide program approval.

§115.19. Home Health Medication Aides.

(a) General law. A person may not administer medication to a patient unless the person:

(1) holds a current license under state law which authorizes the licensee to administer medication;

(2) holds a current permit issued under this section and acts under the delegated authority of a person who holds a current license under state law which authorizes the licensee to administer medication; or

(3) performs duties of a qualified dialysis technician within the scope authorized under §115.18 of this title (relating to Standards for Home Dialysis Designation).

(b) Required actions. A permit holder must:

(1) function under the direct supervision of a registered nurse;

(2) function in accordance with applicable law and this chapter relating to administration of medication and operation of the home health agency;

(3) comply with department rules applicable to personnel used in a home health agency; and

(4) comply with this section and §115.13 of this title (relating to Home Health Aides; Training Course; Duties) if the person will be used as a home health aide and a home health medication aide.

(c) Permitted actions. A permit holder is permitted to:

(1) observe and report to the agency's registered nurse reactions and side effects to medication shown by a patient;

(2) take and record vital signs prior to the administration of medication which could affect or change the vital signs;

(3) administer regularly prescribed medication which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide shall document the administered medication in the patient's clinical record;

(4) administer oxygen per nasal canula or a non-sealing face mask only in emergency. Immediately after the emergency, the permit holder shall verbally notify the supervising registered nurse and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication; and

(6) administer medications only from the original container.

(d) Prohibited actions. Permit holders shall not:

(1) administer medication by the injection route including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intradermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing (IPPB) treatment or other medication inhalation treatments;

(3) administer previously ordered pro re nata (PRN) medication unless authorization is obtained from the agency's registered nurse. If authorization is obtained the permit holder must:

(A) document in the patient's records symptoms indicating the need for medication and the time the symptoms occurred;

(B) document in the patient's records that the agency's registered nurse was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;

(C) obtain permission to administer the medication each time the symptoms occur in the patient; and

(D) insure that the patient's clinical record is co-signed by the registered nurse who gave permission within seven days of incorporation of the notes into the clinical record.

(4) administer the initial dose of a medication that has not been previously administered to a patient. Whether a medication has been previously administered shall be determined by the patient's current clinical records;

(5) calculate a patient's medication doses for administration, except that the permit holder may:

(A) measure a prescribed amount of a liquid medication to be administered; or

(B) break a tablet for administration to a patient provided the registered nurse has calculated the dosage. The patient's medication administration record shall accurately document how the tablet must be altered prior to administration.

(6) crush medication unless authorization has been given in the original physician's order or obtained from the agency's registered nurse. The authorization to crush the specific medication shall be documented on the patient's medication administration record;

(7) administer medications or feedings by way of a tube inserted in a cavity of the body;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(9) order a patient's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed from and labeled by the pharmacy with all required information mandated by the Texas State Board of Pharmacy;

(12) steal, divert, or otherwise misuse medications; or

(13) violate any provision of the statute or of this chapter.

(e) Applicant qualifications. Each applicant for a permit issued under the statute must complete a training program. Prior to enrollment in a training program and prior to application for a permit under this section, all persons:

(1) must be able to read, write, speak, and understand English;

(2) must be at least 18 years of age;

(3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) must be a graduate of a high school or have an equivalent diploma; and

(5) must have:

(A) satisfactorily completed an approved home health aide training program under §115.13 of this title (relating to Home Health Aides; Training Course; Duties); or

(B) completed a competency evaluation program or training and competency evaluation program approved under the Omnibus Budget Reconciliation Act of 1987.

(f) Nursing students. A person who is attending or has attended an accredited Texas school of nursing and who does not hold a license to practice professional or vocational nursing in Texas meets the training requirement for issuance of a permit under this section if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;

(2) successfully completed courses at the nursing school which cover the department's curriculum for a home health medication aide training program;

(3) submits a statement on the form provided by the department which is signed by the nursing school's administrator or other authorized individual and certifies that the person completed the courses specified under paragraph (2) of this subsection. The administrator is responsible for determining that the courses to which he or she certifies cover the department's curriculum. The statement shall be submitted with the person's application for a permit under this section; and

(4) complies with subsection (g)(1), (2), and (4)-(9) of this section.

(g) Nursing graduates. A person who is a graduate of an accredited Texas school of nursing and who does not hold a license to practice professional or vocational nursing in Texas meets the training requirement for issuance of a permit under this section; provided, however, the date of graduation from the nursing school must have been no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

(1) An official application form shall be submitted to the department by the graduate. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application shall be accompanied by the permit application fee.

(3) The applicant must include an official transcript documenting graduation from an accredited Texas school of nursing.

(4) The department shall acknowledge receipt of the application by forwarding to the applicant a copy of this chapter and the department's open book examination.

(5) The applicant shall complete the open book examination and return it within 45 days to the department.

(6) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department.

(7) An open book or written examination shall not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, the department will evaluate all application documents submitted by the applicant.

(9) The department shall notify the applicant in writing of the examination results.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application, may request a waiver of the training program requirement.

(1) An official application form shall be submitted to the department by the applicant. The applicant must meet the requirements of subsection (e)(1)-(4) of this section.

(2) The application shall be accompanied by the permit application fee.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority (law, act, code, section, or otherwise) for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.

(4) The department shall acknowledge receipt of the application by forwarding to the applicant a copy of this chapter and the department's open book examination.

(5) The department may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant shall complete the department's open book examination and return it within 45 days to the department.

(7) The applicant shall complete the department's written examination. The site of the examination shall be determined by the department.

(8) An open book or written examination shall not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, the department will evaluate all application documents submitted by the applicant.

(10) The department shall notify the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to the department, no later than 30 days after enrollment in a training program, all required information and documentation on official department forms.

(1) The department will not consider an application as officially submitted until the applicant submits the nonrefundable combined permit application and examination fee payable to the Texas Department of Health. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form shall contain the following application material which is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met prior to the start of the program;

(C) a statement that the ap-

plicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to the department; and

(F) the applicant's signature which has been dated and notarized.

(3) A certified copy of the applicant's high school graduation diploma or transcript or an equivalent GED diploma shall be submitted unless the applicant is applying under subsection (g) of this section.

(j) Examination. A written examination shall be given by the department to each applicant at a site determined by the department.

(1) No final examination shall be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) The applicant shall be tested on the subjects taught in the training program curricula and clinical experience. The examination shall cover an applicant's knowledge of accurate and safe drug therapy to an agency's clients.

(3) A training program shall notify the department at least four weeks prior to its requested examination date.

(4) The department shall determine the passing grade on the examination.

(5) An applicant who fails the examination shall be notified in writing by the department.

(A) An applicant under subsection (e) of this section may be given a subsequent examination, without additional payment of a fee, upon the applicant's written request to the department.

(B) A subsequent examination shall be completed within 45 days from the date of the failure notification. The site of the examination shall be determined by the department.

(C) Another examination shall not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(6) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to the department. The examination shall be completed within 45 days from the date of the originally scheduled examination. The rescheduled examination shall be at a site determined by the department.

(7) An applicant, whose application for a permit will be disapproved under subsection (k) of this section, is ineligible to take the examination.

(k) Determination of eligibility. The department shall receive and approve or disapprove all applications. Notices of application approval, disapproval or deficiency shall be in accordance with subsection (q) of this section.

(1) An application for a permit shall be disapproved if the person has:

(A) not met the requirements of subsections (e)-(i) of this section, if applicable;

(B) failed to pass the examination prescribed by the department as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by the department;

(D) violated or conspired to violate the statute or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a permit holder as set out in §115.12 of this title (relating to License Denial, Suspension, or Revocation).

(2) If, after review, the department determines that the application should not be approved, the program administrator shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §115.12 of this title (relating to License Denial, Suspension, or Revocation).

(l) Permit renewal. Home health medication aides shall comply with the following permit renewal requirements.

(1) When issued, a permit is valid until the end of the calendar year (December 31st).

(2) A permit holder must renew the permit annually.

(3) The renewal date of a permit shall be the last day of December.

(4) Each permit holder is responsible for renewing the permit before the expiration date. Failure to receive notification from the department prior to the expiration date of the permit shall not excuse failure to file for timely renewal.

(5) A permit holder must complete a seven clock hour continuing education program approved by the department prior to expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the permit holder must begin earning approved continuing education hours.

(6) The department shall deny renewal of the permit of a permit holder who is in violation of the statute or this chapter at the time of application for renewal.

(7) Home health medication aide permit renewal procedures are as follows.

(A) At least 30 days prior to the expiration date of a permit, the department will send to the permit holder at the address in the department's records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form which the permit holder must complete and return with the required renewal fee.

(B) The renewal form shall include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder and notarized.

(C) The department shall issue a renewal permit card to a permit holder who has met all requirements for renewal.

(D) A permit shall not be renewed if the permit holder does not complete the required seven-hour continuing education requirement. Successful completion shall be determined by the student's instructor. An individual who does not meet the continuing education requirement shall complete a new program, application, and examination in accordance with the requirements of this section.

(8) A person whose permit has expired for not more than two years may renew the permit by submitting to the department:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for

each year or part of a year that the permit has been expired; and

(D) proof of having earned, prior to expiration of the permit, seven hours in an approved continuing education program as required in subsection (a)(5) of this section.

(9) A permit that is not renewed during the two years after expiration may not be renewed.

(m) Changes.

(1) Notification of changes shall be reported to the department within 30 days after a change of address or name.

(2) The department will replace a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is as follows:

(A) combined permit application and examination fee - $25;

(B) renewal fee - $15; and

(C) permit replacement fee - $5.00

(2) All fees are nonrefundable.

(3) An applicant whose personal check for the combined permit application and examination fee is not honored by the financial institution may reinstate the application by remitting to the department a money order or cashier's check for the amount within 30 days of the date of the applicant's receipt of the department's notice. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(4) A permit holder whose personal check for the renewal fee is not honored by the financial institution shall remit to the department a money order or cashier's check within 30 days of the date of the licensee's receipt of the department's notice. If proper payment is not received, the permit shall not be renewed. If a renewal card has already been issued, it shall be voided.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Education Agency which desires to offer a training program shall file an application for approval on an official form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on official forms and supporting documentation must be originals.

(B) The application shall include:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list of instructors and any other person responsible for the conduct of the program. The list must include addresses and telephone numbers for each instructor; and

(v) an outline of the program content and curriculum if the curriculum covers more than the department's established curricula.

(C) The department may conduct an inspection of the classroom site.

(D) Notice of approval or proposed disapproval of the application will be given to the program within 30 days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with requirements of the statute or this chapter, the reasons for disapproval shall be given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within 10 days of receipt of the notice of the proposed disapproval. The hearing shall be in accordance with §115.12 of this title (relating to License Denial, Suspension, or Revocation) and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program shall include, but shall not be limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the patient's clinical records, including PRN medications;

(E) minimum licensing standards for home health agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the home health agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of permit holders in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health patients; and

(K) the provision of this chapter.

(3) The program shall consist of 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, 10 hours of clinical observation and skills awareness under a licensed nurse in a home health agency, and 10 more hours in the return skills demonstration laboratory in the preceding order. A classroom or laboratory hour shall constitute 50 clock minutes of actual classroom or laboratory time. Clinical observation may be supervised by appropriate personnel in the home health agency.

(A) Class time shall not exceed four hours in a 24-hour period.

(B) The completion date of the program shall be a minimum of 60 days and a maximum of 180 days from the starting date of the program.

(C) Each program shall follow the curricula established by the department.

(4) At least seven days prior to the commencement of each program, the coordinator shall notify the department in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be

approved by the department prior to the program's effective date of the change.

(6) The program instructors of the classroom hours shall be a registered nurse and registered pharmacist.

(A) The nurse instructor shall have a minimum of two years of full-time experience in caring for the elderly, chronically ill, and/or pediatric patients or have been employed full-time for a minimum of two years with a home health agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor shall have a minimum of one year of experience and be currently employed as a pharmacist.

(7) The coordinator shall provide clearly defined and written policies regarding each student's clinical observation to the student, the administrator and the director of nursing of the home health agency used for the clinical observation.

(A) The clinical observation shall be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of a registered nurse. A student may not actually administer medication during the clinical observation.

(B) The coordinator shall be responsible for final evaluation of the student's clinical observation.

(8) Each program shall issue to each student, upon successful completion of the program, a certificate of completion, which shall include the program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Each program shall inform the department of the final grade results for each student within 15 days of completion of the course. The official department class roster form shall be used and signed by the coordinator.

(p) Continuing education. The continuing education training program is as follows.

(1) The program shall consist of at least seven clock hours of classroom instruction.

(2) The instructors shall meet the requirements in subsection (o)(6) of this section.

(3) Each program shall follow the curricula established by the department.

(4) Each program shall inform the department of the name of each permit holder who completes the course within 15 days. The official department class roster form shall be used and signed by the coordinator.

(q) Processing procedures. The department shall comply with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(A) letter of acceptance of an application for a home health medication aide permit - 14 working days; and

(B) letter of application or renewal deficiency - 14 working days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit - 90 days;

(B) the letter of denial for a permit - 90 days; and

(C) the issuance of a renewal permit - 20 days.

(3) In the event an application is not processed in the time period stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement shall be made to the program administrator of the Home Health Medication Aide Permit Program. If the program administrator of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period is considered to exist if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15% or more the number of applications processed in the same calendar quarter of the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the program administrator of the Home Health Medication Aide Permit Program, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The program administrator of the Home Health Medication Aide Permit Program shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner shall provide written notice of the commissioner's decision to the applicant and the program administrator of the Home Health Medication Aide Permit Program. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(6) The time periods for contested cases related to the denial of initial home health medication aide permits or renewal permits are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a longer period of time depending on the particular circumstances of the hearing.

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 September 19, 1989

TRD-8908704

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

Proposed date of adoption. December 9, 1989.

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

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Chapter 119. Health

Maintenance Organizations

• **25 §119.2, §119.15**

(Editor's Note: The Texas Department of Health 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 Health proposes an amendment to §119.2 and new §119.15, concerning health maintenance organizations (HMO). The sections cover the certification procedure and fees and assessments. The proposal will implement the provisions of House Bill 2179, 71st Legislature, 1989, which amends the Texas Insurance Code, Health Maintenance Organization Act, Article 20A.32. These proposals are also adopted on an emergency basis in this issue of the *Texas Register*, in order to implement the provisions of House Bill 2179 which requires these rules to be in effect by September 1, 1989.

The new section will establish the fees which the Department will charge and collect for the review of an original application for an HMO certificate of authority. The new section also will cover the department assessments against an HMO for the expenses which the department will incur for examining the HMO. The amendment to §119.2 will cover a disciplinary procedure for an HMO which fails to pay the fees or assessments established in new §119.15.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period that the sections are in effect there will be fiscal implications for state government and small businesses as a result of enforcing and administering the sections. The effect on state government will be an estimated increase in revenue of $35,000 each year of the first five years the sections are in effect. The effect on HMOs which are small businesses will be the review of application fee which is $850. Examination expenses will be assessed based on the annual salary of the examiner, direct state-approved travel expenses, and administrative costs including secretarial time and supplies. There will be no effect on local government.

Mr. Seal also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to assure all initial HMO applications for certificates of authority and examination of HMOs will be conducted by the Texas Department of Health. There will be no cost to individuals and no impact on local employment.

Comments on the proposal may be submitted to Nance Kerrigan, Director, Health Facility Licensure and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458- 7245. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The amendment and new sections are proposed under the Texas Insurance Code, Health Maintenance Organization Act, Article 20A.32, which provides the Texas Board of Health with the authority to adopt rules concerning fees and examination expenses relating to health maintenance organizations; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

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 September 18, 1989.

TRD-8908619 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Proposed date of adoption: December 9, 1989.

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

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Chapter 127. Registry for Providers of Health-Related Services

• **25 TAC §§127.1-127.3**

The Texas Department of Health proposes new §§127.1-127.3, concerning the registry for providers of health-related services. The new sections cover requests for placement of an occupation on the registry, approved occupations, and the rules and fees.

The new chapter complies with House Bill 2473, 71st Legislature, 1989, which authorizes the department to establish a registry or system of registeries for providers of a specific health-related service who are not otherwise regulated by the state. The new sections provide procedures for an occupation to request Board of Health approval of the establishment of an occupational registry.

Stephen Seale, Chief Accountant III, has determined that for the first five-year period that the sections are in effect there will be no fiscal implications for state and local governments or small businesses as a result of enforcing or promulgating these sections to decide whether an occupation should be placed on the registry.

Mr. Seale also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to identify health-related service individuals who should be listed on a registry. There will be no effect on local employment and no cost to individuals as a result of enforcing or administering these sections.

Comments on the proposal may be submitted to Becky Berryhill, Program Administrator, Texas Department of Health, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3138, (512) 458-7639.

The new sections are proposed under Texas Session Laws 1989, 71st Legislature, Regular Session, Chapter 1240, §5, which provides the Texas Board of Health with the authority to adopt rules establishing a registry, setting fees, and administering the registry; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§127.1. Request for Placement of an Occupation on the Registry.

(a) A written request may be filed that asks that a registry be established by the Texas Department of Health for an occupation consisting of providers of a specific health-related service who are not otherwise licensed, registered, or certified by any state agency, board, or commission. The request must be filed with the Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(b) The following persons or entities may file a request under subsection (a) of this section:

(1) a state-wide health-related professional organization having members or persons whom it officially recognizes as being a provider of a specific health-related service; or

(2) at least 200 persons who are employed or used as a provider of a specific health-related service at the time of the filing of the request.

(c) The Texas Board of Health shall consider whether to approve or disapprove the inclusion on a registry of the requested occupation.

(d) A request under this section shall not be considered a petition for the adoption of rules.

§127.2. Approved Occupations.

(a) There are no occupations approved by the Texas Board of Health for inclusion on a registry at the time of adoption of this chapter.

(b) Placement of an occupation of providers of a specific health-related service on a registry does not constitute an evaluation of a provider's training or competency or a regulation of the scope of the practice of the provider.

§127.3. Rules and Fees. If the Texas Board of Health approves an occupation for placement on a registry, the Texas Department of Health shall prepare rules as necessary to implement the registry system for that occupation and shall establish a registration fee.

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

Issued in Austin, Texas, on September 18, 1989.

TRD-8908617 Robert A. MacLean, M.D.

Deputy Commissioner for
Professional Services
Texas Department of
Health

Proposed date of adoption: December 9, 1989.

For further information, please call: (512) 458-7639

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IX. Texas Water Commission

Chapter 317. Design Criteria for Sewerage Systems

Design Criteria for Sewerage Systems

- **31 TAC §§317.1-317.13**

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

The Texas Water Commission proposes the repeal of §§317.1-317.13 and new §§317.1-317.14, concerning design criteria for sewerage systems. The chapter establishes minimum design standards for facilities which collect, treat, and dispose of primarily domestic wastewaters and associated waste solids. The chapter is proposed to define the minimum standards which must be met in order to obtain construction approval and (if applicable) capacity of the previously noted facilities. Although these sections are proposed as new sections, most of these regulations have been in effect in 31 TAC Chapter 317 under the jurisdiction of the Texas Water Commission and have basically remained unchanged since 1975. On July 2, 1986, the Texas Water Commission adopted those as permanent rules. Those rules represented joint criteria between the Texas Department of Health and the Texas Water Commission. On September 1, 1987, House Bill 1326, 70th Legislature, transferred jurisdiction of domestic sewerage facilitis under the Texas Water Code, §26.034, to the Texas Water Commission. The proposed rules reflect the transfer of jurisdiction to the Texas Water Commission as well as update the rules to reflect changes in the design and operation of sewerage systems.

While the actual changes are numerous, the majority of them are minor. The major changes or additions that have been made include conditional approvals, minimum pipe stiffness for 15-inch diameter and smaller pipe, clarifier design factors, chlorine contact basin design, ultraviolet disinfection standards, and sludge disposal options.

Section 317.1 includes general provisions which must be met in order to obtain construction approval of a sewerage project. It allows for standard approvals to be made with (if necessary) detailed stipulations or restrictions. It allows conditional approval of processes not covered in these design criteria. Conditional approvals will be utilized for processes which are considered new or innovative and may require warranties, performance bonds, testing, recordkeeping, or reporting. It defines a preliminary engineering report, states when it is necessary to be submitted, and lists the general requirements as to the content of the report. It describes a final engineering design report and specifies what should be contained in that report. It describes the requirements for submitting final plans for review as well as what the final specifications should contain. It requires notification upon completion of construction, inspection during construction, preparation of an operation and maintenance manual, preparation of a sludge management implementation plan, and notification of permit requirement for treatment facilities. Finally, it specifies how a request for variance may be submitted.

Section 317.2 specifies minimum design requirements for sewage collection systems. It includes design considerations for present and future growth. Pipe selection for sewers requires consideration of sewage physical and chemical properties, requires designation by appropriate American Society for Testing and Materials (ASTM), American National Standards Institute or American Water Works Association specification numbers, recommends a minimum pipe stiffness of 46 pounds per square inch (psi) for 15-inch diameter and smaller pipes, and directs the designer of other larger diameter systems to fully investigate pipe stiffness dependent upon type of pipe selected and embedment conditions. Pipe jointing material shall be appropriate for the type of pipe selected. All sewage collection systems shall be tested for infiltration/exfiltration using either a hydrostatic or low pressure air test. Buried pipes shall be installed in accordance with the appropriate ASTM specification. Deflection tests shall be performed on all flexible and semirigid pipes. Separation distances between sewers and waterlines shall be maintained. Combined sewers are not allowed. Consideration shall be given for the location of the sewer with respect to known geologic faults. Pipe carrying capacities shall be determined based on estimated peak flows and experience with existing systems in the area. Minimum pipe sizes and slopes are specified. High velocity protection is required. Straight alignment and grade of sewers between manholes is required. Minimum manhole design and location standards are specified. A table showing minimum manhole spacing is provided. Design standards for inverted siphons are specified. Justifications for the use of pressure sewer systems are stated. A responsible management structure is required for pressure systems. Design considerations for pressure sewer systems include number of units pumping at any one time, flow velocities, installation of air relief valves, positive pressure control valve, cleaning and development of emergency procedures. Piping selected for pressure sewer systems is required to meet minimum sustained pressure tests. Pressure sewer systems are also required to pass hydrostatic tests at specified test conditions. Grinder pumps used in pressure sewer systems must be equipped with backflow prevention devices sufficient power outage holding capacity must be provided in the pumping compartment alarms must be provided and instances where dual grinder pumps are required are specified.

Section 317.3 provides minimum specifications for sewage pump stations and associated piping. It includes considerations for site selection. Special requirements for small lift stations are stated and include a requirement for a positive pressure control valve if conditions warrant. Requirements for dry well sump pumps are clarified. Pump control mechanisms for lift stations are required to be automatically operated and the lift station control panel must be three feet above ground surface elevation. Wet well designs shall be such that the volume is sufficient to provide cycle times of not less than six minutes and not more than 10 minutes for submersible pumps. Influent gravity lines shall enter the wet well above the offsetting liquid level of the pumps. Stairway requirements are stated. Ventilation is required and, if operated on an intermittent basis, must be interconnected with the station lighting system. Sloped wet well bottoms and anti-vortex baffling are suggested. Hoisting equipment must be incorporated in the design. Pump requirements are listed. Lift station pumping capacity must be determined with the largest pumping unit out of service. Requirements for variable capacity pumps are listed. Pump and system head calculations must be provided. Requirements for self-priming pumps are noted. Pump positioning with respect to static head is specified. Lift station piping and valve requirements are stated. Force main specifications include a minimum pressure rating of 150 psi. Emergency provisions for lift stations define the options available for satisfying the requirement for reliable electrical power supply. These options include system retention, alternate power sources, and portable pumping units with adequate alarm systems. All lift stations are recommended to be telemetered to a facility which is manned 24 hours per day.

Section 317.4 generally provides minimum design requirements for various types of wastewater treatment processes. It includes information regarding calculation of influent flow quantity and quality. Effluent quality must meet the appropriate permit limits. Design flow of a plant is defined as the wet weather, maximum 30-day average flow. Plant piping must be arranged for flexible operation. Peak flow is defined as the highest two-hour average flow rate expected to be delivered to the treatment units under any operational condition. Auxiliary power requirements are basically the same as those required for lift stations (§317.3). Stairways, walkways, and guardrails are required where vertical walls terminate more than four feet above or below ground surface. Cross connections with potable water systems are prohibited. Structural design with respect to geologic faults should be considered. Odor control facilities should be evaluated for each plant. Requirements for innovative technology may require a two-year performance bond. Requirements for preliminary treatment units include bar screens, grit removal, fine screens, preparation, and flow equalization. Bar screens are allowed to have a minimum bar spacing of 3/4 inch if manually cleaned and 1/2 inch if mechanically cleaned. A minimum of two fine screens must be used and they must be preceded by a bar screen. Screenings and grit must be disposed of properly. Preaeration may be utilized to

prevent anticipated problems. Flow equalization is encouraged in certain circumstances. Flow measurement is required at all plants

The clarifier inlet velocity shall not exceed 0.15 feet per second. Scum removal is required for all final clarifiers. Effluent weir requirements are noted. Gravity sludge transfer lines shall be a minimum diameter of eight inches. Clarifier surface loading rates for various types of treatment processes are specified A maximum clarifier solids loading rate of 50 pounds of solids per day per square foot of surface area at peak flow rate is stated. Minimum effective detention times at various flow rates for various processes are also stated. It should be noted that these criteria allow the adjustment of side water depth and overflow rate to maintain the required minimum detention time over a range of eight to 16 feet of side water depth. Minimum side water depths are noted with 40-foot diameter (and larger) clarifiers being required to have a minimum 10 foot side water depth. Requirements for hopper bottom clarifiers include a calculation for minimum side water depth.

Numerous design factors to be considered for trickling filters are listed. Typical design loadings (both hydraulic and organic) and estimated biochemical oxygen demand (BOD) removal efficiencies for trickling filters are stated and correlated with media type. Material specifications for both rock and synthetic media are listed. Media placement methods are discussed. Filter hydraulics discuss dosing, distribution equipment, seals, distributor clearance, recirculation, and surface loading. Underdrain systems include underdrains, hydraulics, drain tile, corrosion, ventilation, maintenance, flooding, and flow measurement. Flow measurement is required for influent and recirculation flows to the filter.

Rotating biological contactors (RBC) must be covered. The media selected should be self-cleaning and suited to the type of wastewater to be treated. Dead zones in the contactor tanks should be minimized. RBC units must be preceded by pretreatment. A maximum organic loading rate of five pounds of BOD5 per day per 1,000 square feet of media in any stage is suggested with an absolute maximum of eight pounds required. Maximum organic loading rates for all stages combined are listed. A minimum number of stages is required. Drive system requirements are included for both mechanical and air driven units. A minimum dissolved oxygen concentration of one milligram per liter is required throughout the process. Special design considerations for nitrification in RBC units are noted.

Maximum organic loading rates for activated sludge facilities are listed. It should be noted that the maximum loading for single stage nitrification is 35 pounds of BOD5 per day per 1,000 cubic feet of operating volume. Deviations from the stated loadings must be fully justified. Aeration tank design considerations are listed. Return sludge pumps must be able to provide a variable underflow rate of 200-400 gallons per day per square foot of associated clarifier surface area. A minimum sludge velocity of three feet per second is recommended at an underflow rate of 200 gallons per day per square foot with some method of measuring that flow rate provided. Minimum aeration system requirements are listed and are based upon an oxygen transfer efficiency of 4.0% (or 4.5% for an extended aeration process). Volumetric aeration calculations for diffused air systems may also be made for coarse bubble systems by multiplying the clean water transfer efficiency by 0.65 and for fine bubble systems by 0.45. The maximum allowable wastewater transfer efficiency shall be 12%. Considerations for mixing are also noted. Blower and compressor requirements are listed. Diffuser and associated piping requirements are noted with typical air velocities for various size pipes listed. Mechanical aeration system requirements are stated.

Nutrient removal includes both nitrogen and phosphorous. Nitrification and denitrification processes will be evaluated on a case-by-case basis. Guidance and references to be used in the design of chemical and biological phosphorous removal is provided.

Horsepower and oxygenation requirements for aerated lagoons are stated. Minimum construction standards for these types of lagoons are included. Requirements for subsequent treatment and corresponding efficiency calculations are shown. Wastewater stabilization ponds follow many of the same requirements as aerated lagoons, but have a maximum organic loading of 35 pounds of BOD5 per acre per day and depths in the three to five foot range. Partially mixed aerated lagoons follow these same general design considerations but have a reduced BOD5 removal efficiency based on a stated K rate of 0.28. Facultative lagoons design considerations are also listed.

Wastewater filtration is necessary for those processes which intend to consistently reduce effluent suspended levels below 10 milligrams per liter. Design considerations for single, dual, and mixed media types of filters include various filtration rates, slime control techniques, media thicknesses, effective particle sizes, filter piping, backwash surge control, pumps, backwash rates, and filter underdrains. Design considerations for automatic backwash filters include backwash rates, filtration rates, and surge control.

Section 317.5 contains requirements for stabilization and dewatering of sludges produced at municipal wastewater treatment plants. Sludge treatment and processing shall be in agreement with the requirements of the ultimate form of disposal. Considerations regarding sludge and supernatant volumes are provided. Digester piping shall be a minimum of four inches in diameter. Requirements for sludge pumps are listed and state that if mechanical pumps are used, a sufficient number must be provided so that the design pumping capacity is available with the largest unit out of service. Sludge stabilization is required for all biological processes except extended aeration with a solids retention time of 20 days or more.

Aerobic digesters are recommended to have associated sludge thickening. Requirements for system aeration are included. If a surface aerator is used, it must have an oxygen transfer capability equivalent to that of diffused air systems. Adequate mixing shall be provided. Digester volume shall provide a minimum sludge retention time of 15 days and may be calculated using 20 cubic feet per pound of BOD5 per day. It is also recommended that digester volume be provided in two cells.

Anaerobic digesters which are unheated must provide a minimum solids retention time of 30 days and, if heated, must provide a minimum solids retention time of 15 days or digester capacity may be based on stated cubic feet per pound of BOD5 per day values. Adequate mixing and covers are required. Gas piping shall be adequate for the volume of gas to be handled, shall be sloped, and shall be provided with drip traps. Multiple levels of sludge withdrawal shall be provided. Requirements for treating digester supernatant with lime are listed.

Design considerations for other sludge stabilization processes such as incineration, composting, and wet oxidation are noted.

Requirements for sludge dewatering facilities are listed. Sludge drying beds will have minimum sizes based upon influent BOD5 and location within the state. General design features for drying beds include a minimum of two beds, filtrate removal, method of sludge removal, and filtering media. If vacuum filters, belt filters, filter presses, or other mechanical dewatering filters are used, they shall be of sufficient capacity to maintain daily operations during breakdowns. Provisions for portable dewatering units shall be included in the facility design.

Section 317.6 provides general requirements for wastewater disinfection facilities. It includes specifics for chlorination systems. Chlorine may be used as a disinfectant as well as in other areas of the plant. Chlorination system capacity shall be sufficient for the highest anticipated hydraulic conditions with a recommendation for duplicate equipment. Automatic proportioning of chlorine dosage is encouraged and may be required in cases where a maximum residual is required. Chlorine scales are required. Safety equipment such as a self-contained breathing apparatus must be provided. Requirements for housing of chlorination facilities include separate rooms for chlorination equipment and cylinders of chlorine. Housing requirements also include windows, lighting, minimum temperature, ventilation, fire protection, corrosion control, and floor drains. Emergency power for chlorination systems is required. Chlorination by use of pellets will be evaluated on a case-by-case basis. Chlorine contact chambers must provide an initial mixing intensity (G) of 500 seconds-1 with residence times of three to 15 seconds. Calculations supporting the design G value shall be provided. Contact chamber shall provide a minimum hydraulic residence time of 20 minutes based upon peak design flow. Sludge and scum removal facilities shall be provided at the contact chamber.

Specific design requirements regarding ultraviolet disinfection systems are provided and include maximum treated wastewater concentrations of BOD5 and total suspended solids (TSS) of 20 mg/1 and an absorbance coefficient in the range of 0.3 to 0.5 cm-1. Definitions for an ultraviolet module and bank are provided. Sizing, configuration, and required dosage are based upon stated references and further require that the system be capable of disinfecting the peak design flow with the largest bank of modules out of service. Among other requirements, each individual lamp must be provided with a remote operation indicator and each reactor must be equipped with one ultraviolet intensity meter. Provisions for cleaning of the ultraviolet

lamps and operator safety must be included. A list of required replacement parts is provided.

Note that if a hydraulic detention time of 21 days is provided in the treatment system, chemical disinfection is not normally required. Other disinfection techniques such as ozonation, bromine chloride, and chlorine dioxide will be considered on a case-by-case basis.

Chapter 317.7 provides minimum requirements to ensure the safety of operating personnel at wastewater treatment facilities. It includes a general reference to Occupational Safety and Health Administration (OSHA) guidelines established in 29 Code of Federal Regulations 1901.1. It also includes requirements for railings, stairways, and walkways; requires compliance with local and national electrical codes; and requires that unsafe water be labeled as such. It states that the treatment plant area must be surrounded by an appropriate fence. Appropriate signs for the plant as a whole and hazardous areas in particular must be provided. Color-coding of plant piping containing hazardous materials is required. Color-coding of other plant piping is encouraged. Requirements for portable ventilators and gas detection equipment are listed. Protected potable water should be provided to the plant. Freeze protection should be considered as appropriate. Maximum noise levels, as established by OSHA, should be adhered to. Safety training shall be provided to all employees.

Section 317.8 provides guidance with respect to laboratories, offices, workshops, and landscaping. Design considerations for laboratories include location with respect to vibrating machinery. All plants must make provisions to perform such tests as settleable solids, 30-minute settleability, dissolved oxygen, pH, and chlorine residual. Plants in the 1.0 to 5.0 million gallon per day range shall also be capable of determining suspended solids concentration. All plants in excess of 5.0 million gallons per day shall have access to facilities to provide all permit compliance monitoring, volatile suspended solids, nitrogen series, and alkalinity determinations. It is recommended that all laboratories be provided with air conditioning and heating capabilities. Hand-washing facilities should be provided at all plants. Offices and toilets shall be provided where operators are to be stationed at a plant for operating shifts. Appropriate tool storage and workshops shall be provided. Landscaping should be incorporated into all plant designs.

Section 317.9 (Appendix A) is a map of Texas indicating maximum 24-hour rainfall intensities (based upon a two-year return frequency) for all counties in the state. This rainfall event may be used in calculating inflow/infiltration into existing wastewater collection systems.

Section 317.10 (Appendix B) provides minimum requirements relating to land disposal of sewage effluent by the overland flow process.

The overland flow process provides wastewater treatment by the application of a thin film of fluid to a uniformly sloped, vegetated area. Design references are noted. A range of maximum hydraulic application rates is listed. Storage capacity for use during inclement weather must be provided. A soil profile evaluation should be performed and should extend to a depth of at least three feet. Other design considerations include length of slope, grading, application cycle, method of application, vegetative cover, disinfection, and effluent sampling.

Section 317.11 provides design requirements for the utilization of water hyacinths in the treatment process. Note that other permits from other agencies may be necessary to utilize hyacinths. Hyacinths may be used in uncovered basins only in those counties listed. Multiple basins are required. Maximum organic loading rates are specified. Requirements for natural aerators and mosquito control are listed.

Section 317.12 is a map of Texas which provides minimum required sludge drying bed areas (based upon influent BOD5 loading) for all counties within the state.

Section 317.13 lists minimum separation distances between water and wastewater treatment plants as well as between potable water lines and sanitary sewers.

Section 317.14 provides general requirements for sludge disposal. The types of sludges covered in this section are domestic in nature, not hazardous or industrial. As explained, the commission has jurisdiction over on-site disposal and the Texas Department of Health (TDH) has jurisdiction over off-site disposal. Transportation of sludges must comply with appropriate TDH rules.

Sludges applied to land for beneficial use must be stabilized prior to application and must be applied in a manner to minimize nuisance conditions. Application rates will be based upon available nitrogen, heavy metals, and toxics. Sludge application methods must be designed to prevent runoff. Buffer zones for sludge application sites may be required.

Food chain crops for human consumption shall not be grown on sludge land treatment sites unless authorized by permit from the TDH. Typically, only stabilized sludges will be applied at these sites. Proposals for the application of liquid sludges must include operational controls which will provide protection to groundwater and surface water and which will reduce odors. Considerations for the application of dewatered sludges are stated. Requirements for a technical report to be submitted include maps, photographs, soils analysis, rate of application, character of sludge to be applied, an analysis of the sludge, and a closure plan for the site.

Specific requirements for trench fill, sludge only landfills are presented. Included is a minimum sludge solids content of 15%. Specific requirements for aerial fill and surface impoundment sludge only landfills are listed. Included is a minimum daily cover requirement of six inches. Note that surface impoundments for lagoons used for storage of sludges shall require permitting as sludge management facilities. Co-disposal of sludge at a solid waste landfill is permissible provided various requirements are met. Sludge distribution for controlled or uncontrolled use is regulated by the Texas Department of Health. Other means of sludge disposal will be considered on a case-by-case basis.

Roger Bourdeau, chief fiscal officer, has determined that there will not be fiscal implications as a result of enforcing or administering the sections.

Mr. Bourdeau also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be improved water quality and public health and reduction in potential nuisance conditions. There will be no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kevin McCalla, Senior Attorney, Legal Division, Texas Water Commission, P. O. Box 13087, Austin, Texas 78711-3087.

The repeals are proposed under the authority of the Texas Water Code, §5. 103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state and to establish and approve all general policy of the commission.

§317.1. General Provisions.

§317.2. Sewage Collection System.

§317.3. Lift Stations.

§317.4. Wastewater Treatment Facilities.

§317.5. Sludge Processing.

§317.6. Disinfection.

§317.7. Safety.

§317.8. Design and Operation Features.

§317.9. Appendix A-Formulas.

§317.10. Appendix B-Land Disposal of Sewage Effluent.

§317.11. Appendix C-Hyacinth Basins.

§317.12. Appendix D-Sludge Drying Bed Area.

§317.13. Appendix E-Separation Distances.

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, September 18, 1989

TRD-8908594 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 463-8087

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• 31 TAC §§317.1-317.14

The new sections are proposed under the

Texas Water Code, Chapter 26.034, which provides the Texas Water Commission with the authority to review and approve plans and specifications for all treatment facilities, sewer systems, and disposal systems that transport, treat or dispose of primarily domestic wastes.

§317.1. General Provisions.

(a) Introduction. These design criteria are minimum guidelines to be used for comprehensive consideration of sewage collection, treatment, and disposal systems and establish the minimum design criteria compatible with existing state statutes pertaining to effluent quality. These criteria will promote the design of facilities in accordance with good public health and water quality engineering practices. These criteria include the minimum requirements for a preliminary engineering report which supplies the rationale for the proposed project, and a final engineering report detailing the fully developed project along with plans and specifications.

(1) Authority for requirement. The Texas Water Code prescribes the duties of the Texas Water Commission relating to the control of pollution, including the review and approval of plans and specifications for sewage disposal systems. This authority is found in the Texas Water Code, §§5.013, 12.081-12.083, 15. 104, 15.114, 26.034, 50.107, 51.333, 51.421, 51.422, 54.024, 54.516, 54.517, and 55.503.

(2) Conditions of approval.

(A) Examination of plans and specifications. The commission furnishes consultation services as a reviewing body only, and its registered professional engineers do not serve in the capacity of design engineers or furnish detailed cost estimates. The commission does not ordinarily examine features of the design, such as strength of concrete or adequacy of reinforcing. Plans and specifications will be examined primarily for the aspects of design covered by these design criteria and the operation, maintenance, and safety aspects of the proposed project. Approval given by the commission is not intended to relieve the sewerage system owner or the design engineer of any liabilities or responsibilities with respect to the design, construction, or operation of the project.

(B) Standard approval. Plans and specifications found to comply with all applicable parts of these criteria and to conform to commonly accepted sanitary engineering design practices shall be approved for construction by the commission. Where appropriate, such approvals may contain detailed stipulations or restrictions. Depending on the sewerage facilities proposed, the approval may be issued for a specific set of flow situations, wastewater characteristics, and/or required effluent quality.

(C) Conditional approval. Engineering proposals for processes, equipment, or construction materials not covered in these criteria must be fully described in submitted planning materials and the reasons for their selection clearly outlined. Processes considered by the commission to be new or innovative must also be supported by results of pilot or demonstration studies. Where similarly designed full scale processes exist, and are known to have operated for a reasonable period of time under conditions similar to those suggested for the proposed design, performance data from these existing full scale facilities is preferable to and where appropriate may be substituted for results of pilot or small scale demonstration studies. Any warranties or performance bond agreements offered by the process, equipment, or material manufacturers shall be fully described. When approval to construct is issued for plans and specifications describing processes, equipment, or construction materials determined to fall under this approval category, all parties concerned should understand that the basis upon which the commission's approval was granted centered primarily on the engineering evaluation by the commission's staff of a number of factors including the supporting information provided in the submitting engineer's design report. Where appropriate, conditional approvals may contain a number of stipulations such as requirements for testing, recordkeeping, and reporting. As is true in all cases, regardless of the type of approval, constructed facilities when in operation are required to produce the quality of effluent specified in the appropriate discharge permit(s).

(D) Time to be allowed. Detailed plans and specifications should be submitted at least 30 days prior to the time that approval, comments, or recommendations are desired by the owner. If the review is to be made with the design engineer and/or his client present in view of some unusual features in the proposed design or if early action on the planning material is desired, appointments for such a review must be made in advance of the planned visit. Advance copies of the planning material shall be made available to the commission at least one week prior to the proposed visit. This should not be construed to mean that final action will be taken within the times mentioned; however, every effort will be made to complete the review as quickly as possible.

(E) Changes or alterations. When changes or alterations are planned for existing systems, written notification to the commission shall be made and shall include sufficient information to describe the significance of such modifications. If a waiver of review is requested, it shall be submitted by an engineer registered in Texas. The commission will determine whether engineering plans and specifications will be required following this initial notification of the extent of the planned modifications.

(3) Federal guidelines. Any project constructed with federal financial assistance may be required to conform to federal design criteria or guidelines if such criteria or guidelines are more stringent than those contained herein.

(b) Preliminary engineering report.

(1) Definition. The preliminary engineering report shall form the conceptual basis for the collection, treatment, and/or disposal system proposed. This document shall bear the signed and dated seal of the registered professional engineer responsible for the design.

(A) For projects receiving United States Environmental Protection Agency construction grants assistance, a facility plan may serve as the preliminary engineering report.

(B) For all other projects, a preliminary engineering report proposing processes, methods, or procedures may be submitted as early in the planning stage as is practical. Submission of a preliminary engineering report at this point is only necessary to resolve any potential disagreements between the design engineer and the commission regarding the essential planning information, design data, population projections, and other requirements of the commission. Agreement is desirable to eliminate delays or inconveniences and to avoid the possibility of having to revise the final plans and specifications.

(C) The preliminary engineering report may be merged directly with the final engineering report to produce a single engineering report at the discretion of the sewerage system owner.

(2) General requirements. The following is required for each project as applicable.

(A) A brief description of the project with maps showing the area to be served, general location of proposed improvements, water and wastewater treatment plant sites, existing and proposed streets, parks, drainage ditches, creeks, streams, and water mains shall be provided. The drainage area should be defined clearly, either by contour map or otherwise. Where a contour map is not available to the community, it is recommended that one be obtained and that the contours be shown at intervals of not more than 10 feet. The maps and plans shall be reproduced on paper not larger than 24 inches by 36 inches in size; however, where variations are necessary, all sheets shall be uniform in size.

(B) The domestic population of the area to be served (present and projected) and design population of the project shall be included.

(C) The names of industries contributing any significant wastes, types of industry (standard industry codes), volume of wastes, characteristics and strength of wastes, population equivalent, and other pertinent information shall be included. It should be emphasized that if significant amounts of wastes other than normal domestic sewage are to be treated at the wastewater treatment plant, sufficient data on such wastes must be presented to allow an evaluation of the effect on the treatment process. This would include, but not be limited to, heavy metals and toxic materials such as polychlorinated biphenyls, organic chemicals, and pesticides.

(D) The preliminary engineering report shall include the technical information described in §317.10 of this title (relating to Appendix B-Land Application of Sewage Effluent) for all overland flow projects.

(3) Collection system. The following information shall be provided in the preliminary engineering report if applicable to the project:

(A) present area served and future areas to be served;

(B) terrain data in sufficient detail to establish general topographical features of present and future areas to be served;

(C) lift stations existing and/or proposed;

(D) effect of proposed system expansion on existing system capacity; and

(E) amount of infiltration/inflow existing and anticipated, and how it is to be addressed in the collection system design.

(4) Treatment plant. The following information is required in a preliminary engineering report:

(A) quantity and quality of existing sewage influent and changes in the characteristics anticipated in the future. If adequate records are not available, analyses shall be made for the existing conditions and such information included in the report;

(B) design and peak flow rates being considered and the design period. Design flow is defined as the wet weather maximum 30-day average flow. Therefore, when determining design flow rates, consideration must be given to flows during periods of wet weather in order to assure consistent compliance with discharge permit volume and quality limitations. Peak flow is defined as the highest two-hour flow expected to be encountered under any operational conditions, including times of high rainfall (generally the two-year, 24-hour storm is assumed) and prolonged periods of wet weather. For new systems, the peak flow to average annual flow ratio is normally in the range of three-five to one, although other peaking factors may be warranted;

(C) type of treatment plant proposed and the effluent quality expected. The information should include basis of design, flow, organic loading, infiltration allowance, and efficiency determinations sufficient to a given level of treatment;

(D) type of units proposed and their capacities, considering the criteria contained herein. The information should include detention times, surface loadings, weir loadings, flow diagram, and other pertinent information regarding the design of the plant, including sludge processing units required for the selected ultimate sludge disposal;

(E) treatment plant site information and the siting analysis. The location of the plant, the area included in the plant site, dedicated buffer zone, and a description of the surrounding area including a map or a sketch of the area. Particular reference should be made as to the plant's proximity to present and future housing developments, industrial sites, prevailing winds, highways and/or public thoroughfares, water plants, water supply wells, parks, schools, recreational areas, and shopping centers. If the effluent is to be discharged to the waters of the state, the immediate receiving stream, canal, major water course, etc., shall be designated. The siting analysis shall include:

(i) flood hazard analysis. Provide the 100-year flood plain elevation. Proposed treatment units which are to be located within the 100-year flood plain will not be approved for construction unless protective measures satisfactory to the commission (such as levees or elevation of the treatment units) are included in the project design;

(ii) buffer zone analysis. Demonstrate that the location of each proposed treatment unit is consistent with the buffer zone criteria specified in Chapter 309 of this title (relating to Treatment Plant Siting).

(5) Sludge management. The preliminary engineering report shall include a discussion of the method of sludge disposal to be utilized. The report shall assess the following factors:

(A) estimated quantity of sludge that must be handled which includes future sludge loads based on flow projections;

(B) quality and sludge treatment requirements for ultimate disposal;

(C) sludge storage requirements for each alternative considering normal operating requirements and contingencies;

(D) transportation of sludge;

(E) land use and land availability; and

(F) reliability of the various alternatives, contingencies, and mitigation plans to ensure reliable capacity and operational flexibility.

(6) Control of bypassing. Information and data shall be submitted to describe features (auxiliary power, standby and duplicate units, holding tanks, storm water clarifiers, etc.) and operational arrangements (flexibility of piping and valves to control flow through the plant, reliability of power sources, etc.) to prevent unauthorized discharges of untreated or partially treated wastewater. An outline of control measures to prevent unauthorized discharges of untreated or partially treated wastewater during construction (see subsection (e)(5) of this section) is to be included.

(c) Final engineering design report. The final engineering design report shall be submitted with the final plans and technical specifications. The report shall include calculations and any other engineering information pertaining to the plant design as may be necessary in the review of the plans and specifications by the commission. This report shall bear the signed and dated seal of the registered professional engineer responsible for the design. Information should be included to describe any changes that have been made since a preliminary engineering report was submitted, along with additional information as follows.

(1) Collection system (if applicable):

(A) minimum and maximum grades proposed for each size and type of pipe;

(B) lift stations (also refer to §317.3 of this title (relating to Lift Stations)):

(i) the operating characteristics of the stations at minimum, maximum, and design flows (both present and future);

(ii) safety considerations, such as ventilation, entrances, working areas, and prevention of explosions; and

(iii) means of preventing overflow of raw sewage;

(C) capability of existing trunk and interceptor sewers and lift stations to handle the peak flow under anticipated conditions and capability of existing treatment facilities to receive and adequately treat the anticipated peak flows;

(D) type of pipe proposed and its anticipated performance under the conditions imposed by the particular wastewater quality and loading conditions;

(E) the manhole spacing proposed;

(F) areas not served by the present proposed project, and the projected means of providing service to these areas, including special provisions incorporated in the present plans for future expansion;

(G) amount of infiltration/inflow existing and anticipated, its hydraulic effect on the proposed and existing system, and an abatement plan if applicable, including a:

(i) description of infiltration allowances and test procedures in the specifications governing design of new sanitary sewer lines; and

(ii) description of control program to reduce infiltration/inflow occurring in the existing sewer system;

(H) soil conditions, such as quicksand, that will not support collection system development, and measures to be taken to overcome the anticipated difficulties.

(2) Treatment plant:

(A) the final decisions as to the method of treatment;

(B) types of units proposed and their capacities, considering the criteria contained herein including:

(i) detention times, surface loadings, weir loadings, and flow diagram; and

(ii) other pertinent information regarding the design of the plant, including hydraulic profiles for wastewater and sludge which includes a plot of the hydraulic gradient at peak flow conditions for all gravity lines;

(C) the anticipated operation mode of the plant, the degree of treatment expected and any special characteristics of the plant; and

(D) the safety features included such as stairways, railing, lighting, insulation mats, and walkway mats.

(3) Sludge management system:

(A) the final decisions as to the method(s) of managing sludge, including final disposal;

(B) contingency alternatives; and

(C) the type and size of sludge treatment units to provide the quality of sludge for the selected sludge management method.

(d) Final plans and technical specifications.

(1) Construction drawings and technical specifications will not be considered for review unless they bear the signed and dated seal of the registered professional engineer responsible for the design on each sheet of the plans and on the title page of the technical specifications. These shall be the plans and specifications to be used by the contractor for bidding and construction.

(2) Plans and profiles for sanitary sewers, insofar as practical, shall be prepared using one of the following scales.

Horizontal	Vertical
1" = 20 feet	1" = 2 feet
1" = 40 feet	1" = 4 feet
1" = 50 feet	1" = 5 feet

(3) The size, grade, and type of pipe material shall be shown. Alternate materials may be identified in the bid document.

(4) The location and structural features of the sewers, including manholes to be installed, shall be shown on plans and profiles. The details of the appurtenances shall be provided.

(5) The plans and technical specifications for lift stations shall fully describe all pumps, valves, pumping control mechanisms, safety and ventilation equipment, access operator points, hatches, and hoisting equipment for installing and removing equipment.

(6) The plans and technical specifications for the wastewater treatment plant shall include construction details for all units of the plant as well as equipment and material specifications and installation procedures. The location and details of inlet and outlet structures, valving, and piping arrangements that allow alternate modes of operation during periods of stress such as mechanical failure, structural repair, or any other activity which requires the removal of one or more treatment elements from service, shall be included. The plans shall include a hydraulic profile of the treatment facilities at both design and peak flows. The plans shall also show provisions for future expansion of the plant, should such be contemplated. Details of complex piping should be clarified by the inclusion of an isometric flow diagram as a part of the plans.

(e) Other requirements.

(1) Completion. Upon completion of construction, the design engineer or other engineer appointed by the owner shall notify the commission of completion and attest to the fact that the completed work is substantially in accordance with the plans, technical specifications, and change orders approved by the commission. If substantial changes have been made to the original plans, record drawings documenting such changes shall be submitted to the commission.

(2) Inspection. During construction, the project may be visited by a representative of the commission during normal working hours to establish general compliance with the plans and technical specifications approved by the commission.

(3) Operation and maintenance manual. Prior to completion of construction of a new wastewater treatment plant or plant expansion, an operation and maintenance manual covering the recommended operating procedures and maintenance practices for the entire facility shall be furnished

to the sewerage system owner by the design engineer. The design engineer shall submit a letter to the commission certifying that this action has been performed and shall furnish a copy of the operation and maintenance manual to the commission upon request.

(4) Sludge management implementation plan. The design engineer shall prepare an implementation plan for the selected sludge management method. The plan shall identify regulatory requirements of state and federal agencies. The plan shall also include requirements for selected contingency alternatives.

(5) Authorization to discharge. For treatment plant projects, the owner is required to secure proper authorization from the commission prior to initiation of construction. No discharge shall be authorized without a discharge permit. In no case shall bypassing of partially treated wastewater be authorized during construction without an order for such discharge from the commission. Also see §317.4(a)(3) of this title (relating to Wastewater Treatment Facilities).

(f) Variance. A variance from the design criteria herein may be granted by the commission if the variance would not result in an unreasonable risk to treatment plant performance, public health, or the waters in the state. Requests for variances must be submitted in writing by the design engineer and must, for each affected item, include a detailed engineering justification.

§317.2. Sewage Collection System.

(a) General requirements.

(1) Design. Sewer lines shall be designed considering the estimated population to be served in the future, plus adequate allowance for institutional and commercial flows. Consideration should also be given to the maximum anticipated future wastewater contribution of institutions. Strict attention shall be given to minimizing infiltration/inflow into the system.

(2) Pipe selection. In selecting pipe for sewers, consideration shall be given to the chemical characteristics of the water delivered by public and private water suppliers, the character of industrial wastes, the possibilities of septicity, the exclusion of infiltration, the external forces and internal pressures, abrasion, etc. With due consideration being given to the previously listed, any material suitably adapted to the local conditions may be used for sewers. The sewer pipe to be used shall be identified in the technical specifications with appropriate ASTM, ANSI, or AWWA specification numbers for both quality control (dimensions, tolerances, etc.) and installation (bedding, backfill, etc.). In the design of small-diameter sewers (15 inch and smaller), a minimum pipe stiffness of 46 pounds per square inch is recommended. In the design of large-diameter sanitary sewer systems, other minimum pipe stiffnesses (smaller or larger) may be considered appropriate depending upon the type of pipe selected, the proposed embedment requirements, and other specific design conditions.

(3) Jointing material. The materials used and methods to be applied in making joints shall be included in the specifications. Materials used for sewer joints shall have a satisfactory record of preventing infiltration and root entrance. Rubber gaskets, PVC compression joints, or other types of factory-made joints are required.

(4) Testing of installed pipe. An infiltration and/or exfiltration and/or low-pressure air test shall be specified. Copies of all test results shall be made available to the commission upon request. Tests shall conform to the following requirements.

(A) Infiltration/exfiltration tests. The total infiltration or exfiltration, as determined by water test, shall not exceed 200 gallons per inch diameter per mile of pipe per 24 hours at a minimum test head of two feet. If the quantity of infiltration or exfiltration exceeds the maximum quantity specified, remedial action shall be undertaken in order to reduce the infiltration or exfiltration to an amount within the limits specified.

(B) Low-pressure air test. This test shall conform to the procedure described in ASTM C-828, ASTM C-924, or other appropriate procedures. For safety reasons, it is recommended that air testing of sections of pipe be limited to lines less than 36 inch average inside diameter. Lines 36 inch average inside diameter and larger may be air tested at each joint. The maximum time allowable for the pressure to drop from 3.5 pounds per square inch gauge to 2.5 pounds per square inch gauge during a joint test, regardless of pipe size, shall be 20 seconds. For sections of pipe less than 36 inch average inside diameter, the maximum time allowable for the pressure to drop from 3.5 pounds per square inch gauge to 2.5 pounds per square inch gauge shall be computed by the following equation:

$$T = 0.0850(D)(K)/(Q)$$ where T = time for pressure to drop 1.0 pounds per square inch gauge in seconds

K = 0.00049DL, but not less than 1.0

D = average inside diameter in inches

L = length of line of same pipe size in feet

Q = rate of loss, assume 0.003 ft3/min/sq ft internal surface

(5) Bedding.

(A) Trenching, bedding, and backfill. The width of the trench shall be minimized, but shall be ample to allow the pipe to be laid and jointed properly and to allow the backfill to be placed and compacted as needed. The trench sides shall be kept as nearly vertical as possible. When wider trenches are necessary, appropriate bedding class and pipe strength shall be used. Ledge rock, boulders, and large stones shall be removed to provide a minimum clearance of four inches below and on each side of all pipe(s). Bedding classes A, B, C, or D, described in ASTM C 12 (ANSI A 106.2), Water Pollution Control Federation (WPCF) Manual of Practice (MOP) Number 9 or American Society of Civil Engineers (ASCE) MOP 37 shall be used for all rigid pipes, provided that the proper strength pipe is used with the specified bedding to support the anticipated load. Bedding classes I, II, or III, as described in ASTM D-2321 (ANSI K65.171), shall be used for all flexible and semi-rigid pipes, provided the proper strength pipe is used with the specified bedding to support the anticipated load. Backfill shall be of suit-

able material removed from excavation except where other material is specified. Debris, large clods or stones, organic matter, or other unstable materials shall not be used for backfill within two feet of the top of the pipe. Backfill shall be placed in such a manner as not to disturb the alignment of the pipe. Waterline crossings shall be governed by special backfill requirements specified in §317.13 of this title (relating to Appendix E-Separation Distances).

(B) Deflection test. Deflection tests shall be performed on all flexible and semi-rigid pipes. The tests shall be conducted after the final backfill has been in place at least 30 days. No pipe shall exceed a deflection of 5.0%. If the deflection test is to be run using a rigid ball or mandrel, such test device shall have a diameter equal to 95% of the inside diameter of the pipe. The tests shall be performed without mechanical pulling devices. The design engineer should recognize that this is a maximum deflection criterion for all pipes. A reduced percent deflection may be more appropriate for specific types and sizes of pipe.

(6) Protecting public water supply. Water lines and sanitary sewers shall be installed no closer to each other than nine feet. Where this cannot be achieved, the sanitary sewer shall be constructed in accordance with §317.13 of this title (relating to Appendix E-Separation Distances). No physical connection shall be made between a drinking water supply, public or private, and the sewer or any appurtenance. An air gap of a minimum of two inlet pipe diameters between the potable water inlet and the overflow level of the sewer appurtenances shall be provided.

(7) Excluding surface water. Proposals for the construction of combined sewers will not be approved. Roof, street, or other types of drains which will permit entrance of surface water into the sanitary sewer system will not be considered acceptable.

(8) Active geologic faults. For systems to be located in areas of known active geologic faults, the design engineer shall locate any faults within the area of the collection system and the system shall be laid out to minimize the number of sewers crossing faults. Where crossings are unavoidable, the engineering report shall specify design features to protect the integrity of the sewer. Consideration should be given to joints providing maximum deflection and to providing manholes on each side of the fault so that a portable pump may be used in the event of sewer failures. Service connections within 50 [illegible] of an active fault should be avoided.

(b) Capacities.

(1) Sources. The peak flow of domestic sewage, peak flow of waste from industrial plants, and maximum infiltration rates shall be considered in determining the capacities of sanitary sewers.

(2) Existing systems. The design of extensions to sanitary sewage collection systems should be based on experience. If adequate records are not available, the design will be based on data from similar systems furnished by the design engineer, or in paragraph (3) of this subsection.

(3) New systems. New sewers shall be designed on the basis of an estimated daily sewage flow contribution as shown in the table in §317.4(a) of this title (relating to Wastewater Treatment Facilities). Laterals and minor sewers shall be designed such that when flowing full they will transport wastewater at a rate approximately four times the system design daily average flow. Main trunk, interceptor, and outfall sewers shall be designed to convey expected peak flow.

(c) Design details.

(1) Minimum size. No sewer other than house laterals and force mains shall be less than six inches in diameter.

(2) Hydraulic slopes. All sewers shall be designed and constructed with hydraulic slopes sufficient to give a velocity when flowing full of not less than two feet per second. The grades shown in the following table are based on Manning's formula with an assumed "n factor" of 0.013 and constitute minimum acceptable slopes.

Size of Pipe In Inches I.D.	Fall in Feet Per 100 Feet of Sewer
6	0.50
8	0.33
10	0.25
12	0.20
15	0.15
18	0.11
21	0.09

24	0.08
27	0.06
30	0.055
33	0.05
36	0.045
39	0.04
>39	*

* For lines larger than 39 inches diameter, the slope may be determined by Manning's formula (as shown in this paragraph) to maintain a minimum velocity of two feet per second when flowing full.

$V = (1.49/n)(R^{h\ 0.67})(S^{\ 0.5})$, where:

V = velocity (ft/sec)

n = Manning's roughness coefficient (0.013)

R^h = hydraulic radius (ft)

S = slope (ft/ft)

(3) High velocity protection. Where velocities greater than 10 feet per second are likely to be attained, special provision shall be made to protect against pipe displacement by erosion and/or shock.

(4) Alignment. Sewers shall be laid in straight alignment with uniform grade between manholes. Deviations from straight alignment and uniform grade shall be justified to the satisfaction of the commission.

(5) Manhole use. Manholes shall be placed at points of change in alignment, grade or size of sewer, and at the intersection of sewers and the end of all sewer lines that will be extended at a later date. Any proposal that deviates from this recommendation shall be discussed with and justified to the satisfaction of the commission. Cleanouts with plugs may be installed in lieu of manholes at the end of sewers which are not anticipated to be extended within one year of completion of construction.

(A) Type. Manholes shall be monolithic, cast-in-place concrete, fiberglass, precast concrete, or of equivalent construction. Use of brick manholes is not recommended and shall be justified to the satisfaction of the commission.

(B) Spacing. The maximum recommended manhole spacing for sewers with straight alignment and uniform grades are in the following table. Reduced manhole spacing may be necessary and is dependent on an entity's ability to maintain its sewer lines. Manholes shall not be located where surface water can drain into them. Areas subject to frequent flooding will require special consideration.

Pipe Diameter (Inches)	Maximum Manhole Spacing(Feet)
6 - 15	500
8 - 30	800
6 - 48	1000
54 or larger	2000

(C) Infiltration control. Brick manholes shall not be used in areas where high water tables are encountered. Impervious material should be utilized for manhole construction in these areas in order to insure maximum exclusion of infiltration.

(D) Manhole diameter. Manholes shall be of sufficient inside diameters to allow personnel to work within them and to allow proper joining of the sewer pipes in the manhole wall. The inside diameter of the manholes shall be not less than four feet.

(E) Manhole inverts. Manholes shall have inverts to channel flow to the spring line of the pipes. Inverts shall be equal in depth to one-half the diameter of the pipes connected to that manhole. In manholes with pipes of different sizes, the tops of the pipes shall be placed at the same elevation and flow channels in the invert sloped on an even slope from pipe to pipe. Where sewer lines enter the manhole higher than 24 inches above the manhole invert, the invert shall be filleted to prevent solids deposition. A drop pipe should be provided for a sewer entering a manhole more than 24 inches above the invert. The top of the poured manhole invert outside of the flow channels is to be steeply sloped into the channels.

(F) Manhole covers. Solid manhole covers of nominal 24 inch diameter are to be used for all sewer manholes. Whenever they are within the 100-year floodplain, the manhole covers shall have gaskets and be bolted. Where gasketed manhole covers are required for more than three manholes in sequence, alternate means of venting shall be provided.

(G) Manhole access. Design of features for entering manholes shall be guided by the following criteria.

(i) It is suggested that entrance into manholes in excess of four feet deep be accomplished by means of a portable ladder. Other designs for ingress and egress will be given consideration and careful evaluation. Attention is directed to the safety hazards with the use of manhole steps under certain conditions.

(ii) Monolithically placed or precast concrete, premolded fiberglass, or other similar type manholes, which may not have non-corrosive manhole steps installed, may be entered by use of a portable ladder.

(iii) Where non-corrosive steps are used, the design and construction of such steps should be in accordance with applicable OSHA specifications as published by the United States Department of Labor.

(6) Inverted siphons. Inverted siphons should have not less than two barrels, a minimum pipe size of six inches, and shall be provided with necessary appurtenances for convenient flushing and maintenance. The manholes shall have adequate clearances for rodding, and in general, sufficient head shall be provided and pipe sizes selected to assure velocities of at least three feet per second at design flows. The inlet and outlet details shall be arranged so that the normal flow is diverted to one barrel. Provisions shall be made such that either barrel may be taken out of service for cleaning.

(d) Pressure sewer systems. Use of pressure sewers may be considered when justified by unusual terrain or geological formations, low population density, difficult construction, or other circumstances where a pressure system would offer an advantage over a gravity system. A pressure sewer system is not necessarily a substitute for conventional gravity systems, but lends itself as an alternate to supplement gravity when conditions make a conventional collection system impractical.

(1) Management. A responsible management structure shall be established, to the satisfaction of the Commission, to be in charge of the operation and maintenance of a pressure sewer system.

(A) Pumping units and grinder pumps shall be regarded as integral components of the system and not as a part of the home plumbing.

(B) A reliable community power source shall be provided.

(2) Design considerations. Design considerations are as follows:

(A) the number of units pumping at any one time;

(B) flow velocities in the range of two to five feet per second;

(C) the installation of air relief valves;

(D) positive pressure control valves;

(E) the provision of a means to flush all lines in the system;

(F) the installation of cleanouts; and

(G) development of procedures whereby portions of the pressure system may be rerouted with temporary lines in the event of leaks, construction, or repair.

(3) Pipe selection. The pipe which will be used in this type of sewer application shall have a minimum sustained working pressure rating of 150 pounds per square inch gauge. Joints appropriate for the pipe selected shall be specified. Pipe selection shall also conform to subsection (a)(1), (2), (3), and (5) of this section.

(4) Hydrostatic testing. All pressure pipe installations shall be tested for leakage. Copies of all test results shall be made available to the commission upon request. Leakage shall be defined as the quantity of water that must be supplied into the pipe, or any valved section thereof, to maintain pressure within five pounds per square inch of the specified test pressure after the air in the pipeline has been expelled. The test pressure shall be either a minimum of 25 pounds per square inch gauge or 1. 5 times the maximum force main design pressure, whichever is larger. The maximum allowable leakage shall be calculated using the formula as follows. If the quantity of leakage exceeds the maximum amount calculated, remedial action shall be taken to reduce the leakage to an amount within the allowable limit.

$$L = (S)(D)(P^{0.5})/133,200$$

where L = leakage in gal/hr

S = length of pipe in ft

D = inside diameter of pipe in inches

P = pressure in pounds per square inch

(5) Pumps. Pumping units and grinder pumps used in pressure sewer systems should be reliable, easily maintained, and should have compatible characteristics.

(A) Pumps and grinder pump units shall be provided with backflow prevention devices.

(B) Sufficient holding capacity shall be provided in the pumping compartment to allow for wastewater storage during power outages and equipment failures. Storage volume may be based on power supply outage records and replacement equipment availability.

(C) Pumping units should not be installed in the settling chamber of a septic tank if the septic tank is to be used for solids reduction.

(D) Alarms, warning lights, or other suitable indicators of unit malfunction shall be installed at each pumping station.

(E) Whenever any pumping station handles waste from two or more residential housing units or from any public establishment, dual grinder pump units shall be provided to assure continued service in the event of equipment malfunction.

§317.3. Lift Stations.

(a) Site selection. In the selection of a site for a lift station, consideration shall be given to accessibility and potential nuisance aspects. The station shall be protected from the 100-year flood and shall be accessible during a 25-year flood. All lift stations shall be intruder-resistant with a controlled access. Lift stations should be located as remotely as possible from populated areas.

(b) Design.

(1) Small lift stations. Lift stations designed for a discharge capacity of less than 100 gallons per minute will be reviewed on a case-by-case basis by the commission and shall be used only for institutional use or other locations where it is necessary to pump the sewage from a single building, school, or other measurable source establishment into the sanitary sewer lines. If the location of the discharge does not provide a positive head due to elevation, then a positive pressure control valve shall be provided. Ejectors may be used for this type of lift station. Whenever a lift station handles waste from two or more residential housing units, or from any public establishment, standby pumps shall be provided. In the case of ejectors or eductors, two air compressors shall be provided. Use of grinder pumps is recommended for all small installations.

(2) Dry well sump pump. The following design considerations shall be addressed in providing dry well sump pumps.

(A) Two separate sump pumps should be provided for removal of leakage or water from the dry well floor.

(B) The discharge pipe level from the sump pumps shall be above the maximum liquid level of the wet well.

(C) All floor and walkway surfaces shall have an adequate slope to a point of drainage with sufficient measures taken to maximize traction and safety.

(D) Motors to drive sump pumps shall be located above the height of the maximum liquid level in the wet well. As an alternate, sump pumps may be of the submersible type.

(3) Pump controls. All lift stations shall have automatically operated pump control mechanisms. Pump control mechanisms shall be located so that they will not be affected by flow currents in the wet well. Provisions shall be made to prevent grease and other floating materials and rags in the wet well from interfering with the operation of the controls. When a float tube is located in the dry well, its height shall be such as to prevent overflow of the sewage into the dry well. Pump control mechanisms which depend on a bubbler in the wet well shall be equipped with a backup air supply system. All connections to level controls in the wet well shall be accessible at all times. The circuit breakers, indicator lights, pump control switches, and other electrical equipment shall be located on a control panel at least three feet above ground surface elevation.

(4) Wet wells.

(A) Wet wells and dry wells, including their superstructure, shall be separated by at least a watertight and gastight wall with separate lockable entrances provided to each. Equipment requiring regular or routine inspection and maintenance shall not be located in the wet well, unless the maintenance can be accomplished without entering the wet well.

(B) Based on design flow, wet well capacity should provide a pump cycle time of not less than six minutes for those lift stations using submersible pumps and not less than 10 minutes for other non-submersible pump lift stations.

(C) All influent gravity lines into a wet well shall be located where the invert is above the "off" setting liquid level of the pumps, and preferably should be located above the lead pump "on" setting.

(5) Stairways. Stairways with non-slip steps shall be provided in all underground dry wells. Removable ladders may be provided in small stations where it is impractical to install stairways.

(6) Ventilation. Ventilation shall be provided for lift stations, including both wet and dry wells.

(A) Passive ventilation such as gooseneck type or turbine ventilators designed to prevent possible entry of insects or birds shall be provided in all wet wells if mechanical ventilation is not provided.

(B) Mechanical ventilation shall be provided for all dry wells below the ground surface. The ventilation equipment shall have a minimum capacity of six air changes per hour under continuous operations. At least a capacity of 30 air changes per hour shall be required where the operation is intermittent. All intermittently operated venting equipment shall be interconnected with the station's lighting system. All mechanical and electrical equipment in wet wells shall be explosion-proof and spark-proof construction.

(7) Wet well slopes. The bottom of wet wells shall have a minimum slope of 10% to the pump intakes and shall have a smooth finish. There shall be no projections in the wet well which will allow deposition of solids under ordinary operating conditions. Antivortex baffling should be considered for the pump suctions in all large sewage pumping stations (greater than five mgd firm pumping capacity).

(8) Hoisting equipment. Hoisting equipment or access by hoisting equipment for the removal of pumps, motors, valves, etc., shall be incorporated in the station design.

(9) Dry wells and valve vault drains. Drains from dry wells or valve vaults to the wet well shall be equipped with suitable devices to prevent entry of potentially hazardous gases.

(c) Pumps.

(1) General. All raw sewage pumps shall be of a non-clog design, capable of passing 2 1/2-inch diameter spheres, and shall have no less than three-inch diameter suction and discharge openings. Inspection and cleanout plates, located both on the suction and discharge sides of each pumping unit, are recommended for all non-submersible pumps so as to facilitate locating and removing blockage-causing materials. Where such openings are not provided on the pumps, a hand hole in the first fitting connected to the suction of each pump shall be provided. All pumps shall be securely supported so as to prevent movement during operation. For submersible pumps, rail-type pump support systems incorporating manufacturer-approved mechanisms designed to allow the operator to remove and replace any single pump without first entering or dewatering the wet well are recommended.

(2) Lift station pumping capacity. The firm pumping capacity of all lift stations shall be such that the expected peak flow can be pumped to its desired destination. Firm pumping capacity is defined as total station maximum pumping capacity with the largest pumping unit out of service.

(3) Variable capacity pumps. Lift stations or transfer pumping facilities at a wastewater treatment plant or those discharging directly to the treatment plant where the plant's permitted daily average flow is equal to or greater than 100,000 gallons per day shall be provided with three or more pumps or with duplex automatically controlled variable capacity pumps or other automatic flow control devices. The pumps or other devices shall be adjusted for actual flow conditions and controlled to operate so as to minimize surges in the treatment units. No single pumping unit shall have a capacity greater than the design peak flow of the wastewater treatment plant unless flow splitting/equalization is provided.

(4) Pump head calculations. The engineering design report accompanying the plans shall include system curves, pump curves, and head calculations. Calculations and pump curves at both minimum (all pumps off) and maximum (last normal operating pump on) static heads and for a C value of both 100 and 140 must be provided for each pump and for the combination of pumps (modified pump curves). Where a suction lift is required, the report shall include a calculation of the available net positive suction head (NPSH) and a comparison of that value to the required NPSH for the pump as furnished by the pump manufacturer.

(5) Self-priming pumps. Only self-priming pumps or pumps with acceptable priming systems, as demonstrated by a reliable record of satisfactory operation, shall be used where the suction head is negative. All self-priming pumps shall include a means for venting the air back to the wet well when the pump is priming.

(6) Pump positioning. All raw sewage pumps, other than submersible pumps without "no suction" pipin*g and self-priming units capable of satisfactory operation under any negative suction heads anticipated for the lift station under consideration, shall be positioned such that the pumps always experience, during their normal on-off cycling, a positive static suction head.

(7) Grinder pumps. See §317.2(c) of this title (relating to Sewage Collection System).

(d) Piping.

(1) Pump suctions. Each pump shall have a separate suction pipe. Cavitation may be avoided by using eccentr reducers in lieu of typical reducers in ord to prevent air pockets from forming in the suction line.

(2) Valves. Full closing valves shall be installed on the discharge piping of each pump and on the suction of all dry pit pumps. A check valve shall be installed on the discharge side of each pump, preceding the full closing valve. Check valves should be of a swing check type with external levers. Rubberball check valves may be used for grinder pump installations in lieu of the swing check type. Butterfly valves, tilting disc check valves, or other valves with a pivoted disc in the flow line are not recommended.

(3) Valve position indicators. Gate valves should be rising-stem valves. If other than rising-stem gate valves and check valves with external levers are used, the valves shall include a position indicator to show their open and closed positions.

(4) Lift station piping. Flanged pipe and fitting or welded pipe shall be used for exposed piping inside of lift stations. A flexible or flanged connection shall be installed in the piping to each pump so that the pump may be removed easily for repairs. Provisions shall be made in th design to permit flexure where pipes pas through walls of the station. Piping should normally be sized so that the maximum suction velocity does not exceed five feet per second and the maximum discharge velocity does not exceed eight feet per second.

(5) Force main pipe selection. Force mains shall be a minimum of four inches in diameter, unless justified, as with the use of grinder pumps. Recommended minimum wastewater velocity is three feet per second. In no case shall the velocity be less than two feet per second with only the smallest pump operating, unless special facilities are provided for cleaning the line at specified intervals or it can be shown that a flushing velocity of five feet per second or greater will occur one or more times per day. Pipe specified for force mains shall be of a type having an expected life at least as long as that of the lift station and shall be suitable for the material being pumped and the operating pressures to which it will be subjected. All pipe shall be identified in the technical specifications with appropriate ASTM, ANSI, or AWWA specifications numbers for both quality control (dimensions, tolerances, etc.) and installation (bedding, backfill, etc.). All pipe and fittings shall have a minimum working pressure rating of 150 pounds per square inch.

(6) Force main tests. F... plans and specifications shall describe and require pressure testing for all installed force mains. Minimum test pressure shall be 1. 5 times the maximum design pressure.

(7) Air release valves. Air release valves or combination air release/vacuum valves suitable for sewage service shall be provided at all peaks in elevation. The final engineering drawings must depict proposed force mains in both plan and profile.

(e) Emergency provisions. Lift stations shall be designed such that there is not a substantial hazard of stream pollution from overflow or surcharge onto public or private property with sewage from the lift station. Options for a reliable power source may include.

(1) Power supply. The commission will determine the reliability of the existing commercial power service. Such determinations shall be based on power outage records obtained from the appropriate power company and presented to the commission. When requesting outage records for submittal to the commission, it is important to note that the records be in writing, bear the signature of an authorized utility employee, identify the location of the wastewater facilities being served, list the total number of outages that have occurred during the past 24 months, and indicate the duration of each recorded outage. The facility will be deemed reliable if the demonstrated wastewater retention capacity, in the station's wet well, spill retention facility, and incoming gravity sewer lines, is sufficient to insure that no discharge of untreated wastewater will occur for a length of time equal to the longest electrical outage recorded in the past 24 months. If records for the service area cannot be obtained, a 120-minute worst case outage duration will be assumed. Provisions for a minimum wastewater retention period of 20 minutes should be considered even in those cases where power company records indicate no actual outages of more than 20 minutes occurred during the past 24 months.

(2) Alternative power supply. If the existing power supply is found to be unreliable, an emergency power supply or detention facility shall be provided. Options include:

(A) electrical service from two separate commercial power companies, provided automatic switchover capabilities are in effect;

(B) electrical service from two independent feeder lines or substations of the same electric utility, provided automatic switchover capabilities are in effect;

(C) on-site automatic starting electrical generators;

(D) reliance on portable generators or pumps. Proposals for the utilization of portable units shall be accompanied by a detailed report showing conclusively the ability of such a system to function satisfactorily. Portable units will be approved only in those cases where the station is equipped with an auto-dialer, telemetry device, or other acceptable operator notification device, operators knowledgeable in acquisition and startup of the portable units are on 24-hour call, the station is accessible in all weather conditions, reasonable assurances exist as to the timely availability and accessibility of the proper portable equipment, and the station is equipped with properly designed and tested quick connection facilities. This option is usually acceptable only for smaller lift stations.

(3) Restoration of lift station. Provisions should be made to restore the lift station to service within four hours of outage.

(4) Spill containment structures. A spill containment structure should be considered together with in-system retention in determining a total wastewater retention time. Because separate spill retention facilities are not suitable for all locations, engineers should check with the commission prior to designing such structures. The design shall provide:

(A) a minimum storage volume of average design flow from the contributing area and the longest power outage during the most recent consecutive 24-month period or, if power records are not available, an assumed 24-hour outage;

(B) an impermeable liner (such as concrete or synthetic fabric (20 mil thickness)) and should have an energy dissipator at the point of overflow from the lift station to prevent scour;

(C) a fence with a controlled access; and

(D) a plan for routine cleaning and inspection.

(5) Alarm system. An audio-visual alarm system (red flashing light and horn) shall be provided for all lift stations. It is recommended that these alarm systems be telemetered to a facility where 24-hour attendance is available. The alarm system shall be activated in case of power outage, pump failure, or a specified high water level.

§317.4. Wastewater Treatment Facilities.

(a) General requirements. Whenever possible, existing data of flows and raw waste strenqth from the same plant or nearby plants with similar service areas should be used in design of treatment facilities. When using such data for design purposes, the variability of data should be considered and the design based on the highest flows and strengths encountered during normal operating periods, taking into consideration possible infiltration/inflow. In the absence of existing data, the following are generally acceptable parameters to which must be added appropriate allowances for inflow and infiltration into the collection system to obtain plant influent characteristics.

Source	Remarks	Daily Wastewater Flow - Gallons Per Person	Wastewater Strength mg/1 BOD_5
Municipality	Residential	100	200
Subdivision	Residential	100	200
Trailer Park	2 1/2 persons	50	300
Transient)	per trailer		
Mobile Home Park	3 persons per trailer	75	300
School with Cafeteria	With Showers	20	300
	Without showers	15	300
Recreational Parks	Overnight user	70	200
	Day User	5	100
Office Building or Factory		20	300
Motel		50	300
Restaurant	Per Meal	5	1000
Hospital	Per Bed	200	300
Nursing Home	Per Bed	100	300

(1) Effluent quality. Wastewater treatment plants shall be designed to consistently meet the effluent concentration and loading requirements of the applicable waste disposal permit.

(2) Effluent quantity. The design flow of a treatment plant is defined as the wet weather, maximum 30-day average flow. The design basis shall include industrial wastewaters which will enter the sewerage system. The engineering report shall state the flow and strength of wastewaters from industries which individually contribute 5.0% or more of plant flow or loading and discuss the aspect of hazardous or toxic wastes. It is the intent of these design criteria that the permit conditions not be violated. The engineering report shall list the design influent flow and concentration of BOD5, TSS, or other parameters for the following:

(A) dry weather 30-day average (QDW);

(B) wet weather maximum 30-day average (QD); and

(C) two-hour peak flow (Qp)

(3) Piping. The piping within all plants shall be arranged so that when one unit is out of service for repairs, plant operation will continue and emergency treatment can be accomplished. Valves and piping shall be provided and sized to allow dewatering of any unit, in order that repairs of the unit can be completed in as short a period of time as possible. Portable pumping units may be used for dewatering small treatment plants (design flow of less than 100,000 gallons per day) or interim facilities. Removed wastes must be stored for retreatment or delivered to another treatment facility for processing. Consideration shall be given in design for means to clean piping, especially piping carrying raw wastewater, sludges, scum, and grit.

(4) Peak flow. For treatment unit design purposes, peak flow is defined as the highest two-hour average flow rate expected to be delivered to the treatment units under any operational condition, including periods of high rainfall (generally the two-year, 24-hour storm is assumed) and prolonged periods of wet weather. With pumped inflow, clarifiers shall have the capacity of all pumps operating at maximum wet well level unless a control system is provided that will limit the pumping rate to the firm capacity. This flow rate may also include skimmer flow, thickener overflow, filter backwash, etc. All treatment plants must be designed to hydraulically accommodate peak flows without adversely affecting the treatment processes. The engineer shall determine, by methods acceptable to the commission, the appropriate peak flow rate, including the possibility of utilizing standby pumps. The proposed two-hour peak flow rate, together with a discussion of rationale, calculations, and all supporting flow rate data shall be, unless presented in the preliminary engineering report, included in the final engineering design report. Special storm flow holding basins or flow equalization facilities can be specified to partially satisfy the requirements of this section where all treatment units within a plant are not sized for peak flow. See §317.9 of this title (relating to Appendix A) for referencing a two-year 24-hour rainfall event.

(5) Auxiliary power. The need for auxiliary power facilities shall be evaluated for each plant and discussed in the preliminary and final engineering reports. Auxiliary power facilities are recommended for all plants, unless dual power supply arrangements can be made or unless it can be demonstrated that the plant is located in an area where electric power reliability is such that power failure for a period to cause deterioration of effluent quality is unlikely. Acceptable alternatives to auxiliary power include the ability to store influent flow or partially treated wastewater during power outage. Auxiliary power may be required by the commission for plants discharging near drinking water reservoirs, shellfish waters, or areas used for contact recreation, and for plants discharging into waters that could be unacceptably damaged by untreated or partially treated effluent. For more information on power reliability determination and emergency power alternatives, refer to §317.3(e) of this title (relating to Emergency Provisions.)

(6) Component reliability. Multiple units may be required based upon the uses of the receiving waters and the significance of the treatment units to the treatment processes.

(7) Stairways, walkways, and guard rails. Basins having vertical walls terminating four or more feet above or below ground level shall provide a stairway to the walkway. Guard rails on walkways shall have adequate clearance space for maintenance operations (see §317.7 of this title (relating to Safety)).

(8) Public drinking water supply connection. There shall be no water connection from any public drinking water supply system to a wastewater treatment plant facility unless made through an air gap or a backflow prevention device, in accordance with AWWA Standard C506 (latest revision) and AWWA Manual M14. All backflow prevention devices shall be tested annually with their test and maintenance report forms retained for a minimum of three years. All washdown hoses using potable water must be equipped with atmospheric vacuum breakers located above the overflow level of the washdown area.

(9) Ground movement protection. The structural design of treatment plants shall be sufficient to accommodate anticipated ground movement including any active geologic faults and allow for independent dewatering of all treatment units. Plants should not be located within 50 feet of geologic faults.

(10) Odor control facilities. The need for odor control facilities shall be evaluated for each plant. Factors to be considered are the dissolved oxygen level of the incoming sewage and the type of treatment process proposed.

(11) Innovative or nonconforming technology. Where it is proposed to use an innovative technology or such technology that does not conform with or is not addressed in this design criteria, the facility may be conditionally approved where the manufacturer or supplier provides the commission a copy of a two-year performance bond insuring the performance of their facility. The performance bond must cover the cost of removal or abandonment of the facility, replacement with a previously agreed upon type of facility, and all associated engineering fees necessary for the removal and replacement. Two years after the facility startup, an engineering report must be submitted to the commission detailing the performance of the facility, unbiased calculations and data supporting the facility's performance, and statements from the design engineer and permittee demonstrating that the facility has satisfied its manufacturer s claims. The determination of when a two-year performance bond is required rests with the commission.

(b) Preliminary treatment units. Bar screens, screens, or shredders through which all wastewater will pass should be provided at all plants with the exception of plants in which septic tanks, Imhoff tanks, facultative, aerated, or partially mixed lagoons represent the initial treatment unit. In the event bar screens, screens, or shredders are located four or more feet below ground level, appropriate equipment shall be provided to lift the screenings to ground elevation. Where mechanically cleaned bar screens or shredders are utilized, a backup unit or manually cleaned bar screen shall be provided.

(1) Bar screens. Manually cleaned bar screens shall be constructed having a 30-degree to 60-degree slope to a horizontal platform which will provide for drainage of the screenings. Bar screen openings shall not be less than 3/4 inch for manually cleaned bar screens and 1/2 inch for mechanically cleaned bar screens. The channel in which the screen is placed shall allow a velocity of two feet per second or more at design flow. Velocity through the screen opening shall be less than three feet per second at design flow.

(2) Grit removal. Grit removal facilities should be considered for all wastewater treatment plants. Grit washing facilities shall be provided unless a burial area for the grit is provided within the plant grounds, or the grit is handled otherwise in such a manner as to prevent odors or fly breeding. Grit removal units shall have mechanical means of grit removal or other acceptable methods for grit removal. Plants which have a single grit collecting chamber shall have a bypass around the chamber. All grit collecting chambers shall be designed with the capability to be dewatered. The method of velocity control used to accomplish grit removal in gravity settling chambers shall be detailed in the final engineering report.

(3) Fine screens. Fine screens, if used, shall be preceded by a bar screen. Fine screens shall not be substituted for primary sedimentation or grit removal; however, they may be used in lieu of primary treatment if fully justified by the design engineer. A minimum of two fine screens shall be provided, each capable of independent operation at peak flow. A steam cleaner or high pressure water hose shall be provided for daily maintenance of fine screens.

(4) Screenings and grit disposal. All screenings and grit shall be disposed of in an approved manner. Suitable containers with lids shall be provided for holding screenings. Runoff control must be provided around the containers where applicable. Fine screen tailings are considered as infectious waste; therefore, containers must provide vector control if wastes are not disposed of daily at a Type 1 landfill.

(5) Preaeration. Because preaeration may be proposed when a particular problem is anticipated, evaluation of these units will be on a case-by-case basis. Diffuser equipment shall be arranged for greatest efficiency, with consideration given to maintenance and inspection.

(6) Flow equalization. Equalization should be considered to minimize random or cyclic peaking of organic or hydraulic loadings. Equalization units should be provided after screening and grit removal.

(A) Aeration. Aeration may be required for odor control. When required, air supply must be sufficient to maintain 1.0 mg/l of dissolved oxygen in the wastewater.

(B) Volume. A diurnal flow graph with supporting calculations used for sizing the equalization facility must be provided in the engineering report. Generally, an equalization facility requires a volume equivalent to 10% to 20% of the anticipated dry weather 30-day average flow. Tankage should be divided into separate compartments to allow for operational flexibility, repair, and cleaning.

(c) Flow measuring devices and sampling points. A means for measuring effluent flow shall be provided at all plants. Consideration should be given to providing a means to monitor influent flow. Where average influent and effluent flows are significantly different, e.g., plants with large water surfaces located in areas of high rainfall or evaporation or plants using a portion of effluent for irrigation, both influent and effluent must be measured. Consideration should be given to internal flow monitoring devices to measure returned activated sludge and/or to facilitate splitting flows between units with special attention being given when units are of unequal size. All plants shall be provided with a readily accessible area for sampling effluent.

(d) Clarifiers.

(1) Inlets. Clarifier inlets shall be designed to provide uniform flow and stilling. Vertical flow velocity through the inlet stilling well shall not exceed 0.15 feet per second at peak flow. Inlet distribution channels shall not have deadened corners and shall be designed to prevent the settling of solids in the channels. Inlet structures should be designed to allow floating material to enter the clarifier.

(2) Scum removal. Scum baffles and a means for the collection and disposal of scum shall be provided for primary and final clarifiers. Scum collected from final clarifiers in plants utilizing the activated sludge process, or any modification thereof, and aerated lagoons may be discharged to aeration basin(s) and/or digester or disposed of by other approved methods. Scum from all other final clarifiers and from primary clarifiers shall be discharged to the sludge digester or other approved method of disposal. Discharge of scum to any open drying area is not acceptable. Mechanical skimmers shall be used in units with a design flow greater than 25,000 gallons per day. Smaller systems may use hydraulic differential skimming provided that the scum pickup is capable of removing scum from the entire operating surface of the clarifier. Scum pumps shall be specifically designed for this purpose.

(3) Effluent weirs. Effluent weirs shall be designed to prevent turbulence or localized high vertical flow velocity in the clarifiers. Weirs shall be located to prevent short circuiting flow through the clarifier and shall be adjustable for leveling. Weir loadings shall not exceed 20,000 gallons per day peak design flow per linear foot of weir length for plants with a design flow of 1.0 mgd or less. Special consideration will be given to weir loadings for plants with a design flow in excess of 1.0 mgd, but such loadings shall not exceed 30,000 gallons per day peak flow per linear foot of weir.

(4) Sludge lines. Means for transfer of sludge from primary, intermediate, or final clarifiers for subsequent processing shall be provided so that treatment efficiency will not be adversely affected. Gravity sludge transfer lines shall not be less than eight inches in diameter.

(5) Basin sizing. Overflow rates are based on the surface area of clarifiers. The surface areas required shall be computed using the following criteria. The actual clarifier size shall be based on whichever is the larger size from the two surface area calculations (peak flow and design flow surface loading rates). The final clarifier solids loading for all activated sludge treatment processes shall not exceed 50 pounds of solids per day per square foot of surface area at peak flow rate. The following design criteria for clarifiers are based upon a side water depth of 10 feet and shall be considered acceptable.

Clarifier	Maximum Surface[a] Loading @ Peak Flow (gal/day/sq ft)	Minimum Effective[c] Detention Time @ Peak Flow (hrs)	Maximum Surface[a] Loading @ Design Flow (gal/day/sq ft)	Minimum Effective[c] Detention Time @ Design Flow (hrs)
Primary & Intermediate	1800	____	1000	____
Final:				
Fixed Film Secondary	1600	1.1	800	2.2
Fixed Film Enhanceed Secondary[b]	1400	1.3	700	3.0
Activated Sludge (except extended air) Secondary	1400	1.3	700	2.6
Enhanced Secondary[b]	1200	1.5	600	3.0
Extended Air Secondary	1000	1.8	500	3.6
Extended Air Enhanced Secondary[b]	800	2.2	400	4.5
Second Stage Nitrification	1200	1.5	600	3.0

a Does not include recirculation

b Enhanced Secondary Treatment refers to enhanced solids removal achieved through reducing the hydraulic and solids loading to the clarifier

c Overflow rate and side water depth (SWD) may be adjusted, keeping the detention time unchanged, over a range of 8 ft. to 16 ft. of SWD. The detention time is based on the effective volume and the overflow rate of the circular or rectangular clarifier. (The effective volume includes all liquid above the sludge blanket). For cone bottom tanks, the top of the sludge blanket is considered to be at the top of the cone. For flat bottom tanks, a sludge blanket of 3 ft. should be allowed for development of maximum return sludge concentration.

(6) Sidewater depth. The minimum sidewater depth for conventional primary and intermediate clarifiers is seven feet. All final clarifiers shall have a minimum sidewater depth of eight feet. Final clarifiers having a surface area equal to or greater than 1,250 square feet (diameter equal to or greater than 40 feet) must be provided with a minimum sidewater depth of 10 feet.

(7) Hopper bottom clarifiers. Hopper bottom clarifiers without mechanical sludge collecting equipment will only be approved for those facilities with a permitted design flow of less than 25,000 gallons per day. The required sidewater depth (SWD) for hopper bottom clarifiers may be computed using the following equation: SWD = 160 QD + 4, where SWD equals required sidewater depth in feet and QD equals design flow in million gallons per day. Furthermore, SWD as computed previously for any flow may be reduced by crediting the upper one-third of the hopper as effective sidewater depth if the following conditions are met:

(A) clarifier surface loading rate is reduced by at least 15% from maximum loading rate as per paragraph (5) of this subsection;

(B) influent stilling baffle and effluent weir are designed to prevent short circuiting;

(C) detention time at peak flow is at least 1.8 hours for secondary treatment and 2.4 hours for advanced treatment; and

(D) an appropriate form of flow equalization is used.

(8) Sludge collection equipment. All conventional clarifier units that treat flow from a treatment plant facility with a design flow of 25,000 gallons per day or greater shall be provided with mechanical sludge collecting equipment. Hopper bottom clarifiers must have a smooth wall finish and a hopper slope of not less than 60 degrees.

(9) BOD5 removal. It shall be assumed that the BOD5 removal in a primary clarifier is 35%, unless satisfactory evidence is presented to indicate that the efficiency will be otherwise. In plant efficiency calculations, it shall be assumed that the BOD5 removal in intermediate and final clarifiers is included in the calculation for the efficiency of the treatment unit preceding the intermediate or final clarifier.

(e) Trickling filters.

(1) General. Trickling filters are secondary aerobic biological processes which are used for treatment of sewage.

(2) Basic design parameters. Trickling filters are classified according to applied hydraulic loading in million gallons per day per acre of filter media surface area (mgd/acre), and organic loadings in pounds BOD per day per 1,000 cubic feet of filter media (lb BOD/day-1,000 cu ft). The following factors should be considered in the selection of the design hydraulic and organic loadings: strength of the influent sewage, effectiveness of pretreatment, type of filter media, and treatment efficiency required. Typical ranges of applied hydraulic and organic loadings for the different classes of trickling filters are presented in the following table for illustrative purposes. The design engineer shall submit sufficient operating data from existing trickling filters of similar construction and operation to justify his efficiency calculations for the filters, and a filter efficiency formula from a reliable source acceptable to the commission. The formula of the National Research Council may be used when rock media is used in the trickling filter(s).

Typical Design Loadings

Operating Charcteristics	Standard Rate	Intermediate Rate	High Rate		Roughing
Media	Rock	Rock	Rock	Manufactured	Rock
Hydraulic Loading:					
mgd/acre	1-4	4-10	10-40	15-90*	60-180*
gpd/sq ft	25-90	90-230	230-900	350-1000*	1400-4200

Organic Loading:					
lb BOD/acre-ft/day	200-1000	700-1400	1000-1300	up to 300	100+
lb BOD/day/1000 cu. ft.	5-25	15-30	25-300	65-85	40-65
BOD Removal (%)	80-85	50-70	65-85		

*Does not include recirculation

(3) Pretreatment. The trickling filter treatment facility shall be preceded by primary clarifiers equipped with scum and grease removal devices. Design engineers may submit operating data as justification of other alternative pretreatment devices which provide for effective removal of grit, debris, suspended solids, and excess oil and grease. Preaeration shall be provided where influent wastewater contains harmful levels of hydrogen sulfide concentrations.

(4) Filter media.

(A) Material specifications for rock media. The following are minimum requirements.

(i) Crushed rock, slag, or similar media should not contain more than 5.0% by weight of pieces whose longest dimension is greater than three times its least dimension. The rock media should be free from thin, elongated, and flat pieces and should be free from dust, clay, sand, or fine material. Rock media should conform to the following size distribution and grading when mechanically graded over a vibrating screen with square openings:

(I) passing five inch sieve–100% by weight;

(II) retained on three-inch sieve–95-100% by weight;

(III) passing two-inch sieve–0.2% by weight;

(IV) passing one-inch sieve–0.1% by weight;

(V) the loss of weight by a 20-cycle sodium sulphate test, as described in the American Society of Civil Engineers Manual of Engineering and Engineering Practice Number 13, shall be less than 10%.

(ii) Rock media shall not be less than four feet in depth (at the shallowest point) nor deeper than eight feet (at the deepest point of the filter).

(B) Synthetic (manufactured or prefabricated) media.

(i) Application of synthetic media shall be evaluated on a case-by-case basis. Suitability should be evaluated on the basis of experience with installations treating similar strength wastewater under similar hydraulic and organic loading conditions. The manufacturer's recommendations shall be included, as well as case histories involving the use of the media.

(ii) Media shall be relatively insoluble in sewage and resistant to flaking or spalling, ultraviolet degradation,

disintegration, erosion, aging, all common acids and alkalies, organic compounds, biological attack, and shall support the weight of a person when the media is in operation.

(iii) Media depths should be consistent with the recommendations of the manufacturer.

(C) Placing of media.

(i) The dumping of media directly on the filter is unacceptable. Instructions for placing media shall be included in the specifications.

(ii) Crushed rock, slag, and similar media shall be washed and screened or forked to remove clays, organic material, and fines.

(iii) Such materials should be placed by hand to a depth of 12 inches above the underdrains and all material should be carefully placed in a manner which will not damage the underdrains. The remainder of the material may be placed by means of belt conveyors or equally effective methods approved by the engineers. Trucks, tractors, or other heavy equipment should not be driven over the filter media during or after construction.

(iv) Prefabricated filter media shall be placed in accordance with recommendations provided by the manufacturer.

(5) Filter hydraulics.

(A) Dosing. Wastewater may be applied to the filters by siphons, pumps, or by gravity discharge from preceding treatment units when suitable flow characteristics have been developed.

(B) Distribution equipment. Settled wastewater may be distributed over the filter media by rotary, horizontal, or travelling distributors, provided the equipment proposed is capable of producing the required continuity and uniformity of distribution over the entire surface of the filter. Deviation from a calculated uniformly distributed volume per unit surface area shall not exceed 10% at any portion of the filter. Filter distributors shall be designed to operate properly at all flow rates. Excessive head in the center column of rotary distributors shall be avoided, and all center columns shall have adequately sized overflow ports to prevent the head from building up sufficiently for the water to reach the bearings in the center column. Distributors shall include cleanout gates on the ends of the arms and shall also include an end nozzle to spray water on the wall of the filter to keep the edge of the media continuously wet. The filter walls shall extend at least 12 inches above the top of the ends of the distributor arms.

(C) Seals. The use of mercury seals is prohibited in the distributors of newly constructed trickling filters. If an existing treatment facility is to be modified, any mercury seals in the trickling filters shall be replaced with oil or mechanical seals.

(D) Distributor clearance. A minimum clearance of six inches shall be provided between the top of the filter media and the distributing nozzles.

(E) Recirculation. In order to insure that the biological growth on the filter media remains active at all times, provisions shall be included in all designs for minimum recirculation during periods of low flow. This minimum recirculation shall not be considered in the evaluation of the efficiency of the filter unless it is part of the proposed specified continuous recirculation rate. Minimum flow to the filters shall not be less than 1.0 mgd per acre of filter surface. In addition, the minimum flow rate must be great enough to keep rotary distributors turning and the distribution nozzles operating properly. For facilities with a design capacity greater than or equal to 0.5 mgd and in which recirculation is included in design computations for BOD5 removal, recirculation shall be provided by variable speed pumps and a method of conveniently measuring the recycle flow rate shall be provided.

(F) Surface loading. The engineering report shall include calculations of the maximum, design, and minimum surface loadings on the filter(s) in terms of millions of gallons per acre of filter area per day (for the initial year and design year). Hydraulic loadings of filters with crushed rock, slag, or similar media shall not exceed 40 mgd per acre based on design flow. The minimum surface loading shall not be less than 1. 0 mgd per acre. Loadings on synthetic (manufactured or prefabricated) filter media shall be within the ranges specified by the manufacturer.

(6) Underdrain system.

(A) Underdrains. Underdrains with semicircular inverts or equivalent shall be provided and the underdrainage system shall cover the entire floor of the trickling filter. Inlet openings into the underdrains shall provide an unsubmerged gross combined area of at least 15% of the surface area of the filter.

(B) Hydraulics. Underdrains and the filter effluent channel floor shall have a minimum slope of 1.0%. Effluent channels shall be designed to produce a minimum velocity of two feet per second at average daily flow rate of application to the trickling filter.

(C) Drain tile. Underdrains for rock media trickling filters shall be either vitrified clay or precast reinforced concrete. The use of half tile for underdrain systems is unacceptable.

(D) Corrosion. Underdrain systems for synthetic media trickling filters shall be resistant to corrosion.

(E) Ventilation. The underdrain system, effluent channels, and effluent pipe shall be designed to permit free passage of air. Drains, channels, and effluent pipes shall have a cross-sectional area such that not more than 50% of the cross-sectional area will be submerged at peak flow plus recirculation. Provision shall be made in the design of the effluent channels to allow the possibility of increased hydraulic loading. The underdrain system shall provide at least one square foot of ventilating area (vent stacks, ventilating holes, ventilating ports) for every 250 square feet of rock media filter plan area. Ventilating area for synthetic media underdrains shall be provided as recommended by the manufacturer, but shall be at least one square foot for every 175 square feet of synthetic media trickling filter plan area.

(F) Maintenance. All flow distribution devices, underdrains, channels, and pipes shall be designed so they may be maintained, flushed, and properly drained. The units shall be designed to facilitate cleaning of the distributor arms. A gate shall be provided in the wall to facilitate rodding of the distributor arms.

(G) Flooding. Provisions shall be made to enable flooding of the trickling filter for filter fly control; however, consideration will be given by the commission to alternate methods of filter fly control provided that the effectiveness of the alternate method is verified at a full scale installation. This information shall be submitted with the plans and specifications.

(H) Flow measurements. Means shall be provided to measure flow to the filter and recirculation flows.

(f) Rotating biological contactors (RBC).

(1) General.

(A) RBC units shall be covered and ample ventilation provided. Working clearance of approximately 30 inches should be provided within the cover unless the covers are removable, utilizing equipment normally available on site. Enclosures shall be constructed of a suitable corrosion-resistant material.

(B) The design of the RBC media shall provide for self-cleaning action

due to the flow of water and air through the media. Careful selection of media that will not entrap solids should be made.

(C) The RBC tank should be designed to minimize zones in which solids will settle out.

(D) RBC media should be selected which is compatible with the wastewater. Selection of media can be critical where the wastewater has an industrial waste portion which either significantly increases the wastewater temperature or contains a chemical constituent which may decrease the life of the RBC media.

(2) Design.

(A) Pretreatment. RBC units shall be preceded by pre-treatment to remove any grit, debris, and excess oil and grease which may hinder the treatment process or damage the RBC units. The design engineer should consider primary clarifiers with scum and grease collecting devices, fine screens, and oil separators. For wastes with high hydrogen sulfide concentrations, preaeration shall be provided.

(B) Organic loading. The organic loading for the design of RBC units shall be based on total BOD5 in the waste going to the RBC, including any side streams. The design engineer should consider a maximum loading rate of 5 lb BOD5 per day per 1,000 ft2 of media in any stage, depending on the character of the influent wastewater. The maximum loading rate shall not exceed 8 lb BOD5 per day per 1,000 ft2 of media in any stage. The design engineer should also consider the ratio of soluble BOD5 to total BOD5 and its possible effect on required RBC media area. Allowable organic loading for the entire RBC system shall not exceed the following criteria.

Degree of Treatment	Maximum Organic Loading (lb. BOD_5/day/1,000 ft.^{2} of media area)
Secondary	3.0
Advanced Secondary	2.0

(C) Stages of treatment. The number of RBC units in series (stages) for BOD removal only shall be a minimum of three stages. For BOD removal and nitrification, there shall be a minimum of four stages. If the plant is designed with less stages than noted in the previous sentences of this subparagraph, the engineer must provide justification based on either full-scale operating facilities or pilot unit operational data. Any pilot unit data used in the justification must take into consideration an appropriate scale-up factor.

(D) Drive system. The drive system for each RBC unit shall be selected for the maximum anticipated media load. A variable speed system should be considered to provide additional operator flexibility. The RBC units may be mechanically driven or air driven.

(i) Mechanical drives.

(I) Each RBC unit shall have a positively connected mechanical drive with motor and speed reduction unit to maintain the required rpm.

(II) A fully-assembled spare mechanical drive unit for each size shall be provided on-site.

(III) Supplemental diffused air should be considered for mechanical drive systems to help remove excess biomass from the media and to help maintain the minimum dissolved oxygen concentration.

(ii) Air drives.

(I) Each RBC unit shall have air diffusers mounted below the media and off-center from the vertical axis of the RBC unit. Air cups mounted on the outside of the media shall collect the air to provide the driving force and maintain the required rpm.

(II) Blowers shall provide enough air flow for each RBC unit plus additional capacity to double the air flow rate to any one unit while the others are running normally.

(III) The blowers shall be capable of providing the required air flow with the largest unit out of service.

(IV) The air diffuser line to each unit shall be mounted such that it can be removed without draining the tank or removing the RBC media.

(V) An air control valve shall be installed on the air diffuser line to each RBC unit.

(E) Dissolved oxygen. The RBC plant shall be designed to maintain a minimum dissolved oxygen concentration of one milligram per liter at all stages during the peak organic flow rate. Supplemental aeration may be required.

(F) Nitrification. The design of a RBC plant to achieve nitrification is dependent upon a number of factors, including the concentration of ammonia in the influent, effluent ammonia concentration required, BOD5 removal required, minimum operational temperatures, and ratio of peak to design hydraulic flow. Each of these factors will impact the number of stages of treatment required and the allowable ammonia nitrogen loading (lb NH3/day/1,000 ft2 media) required to achieve the desired levels of nitrification for a given facility. The engineer shall submit appropriate data supporting the design.

(G) Design flexibility. The designer of a RBC plant should consider provisions to provide additional operational flexibility such as controlled flow to multiple first stages, alternate flow and staging arrangements, removable baffles between stages, and provision for step feed and supplemental aeration.

(g) Activated sludge facilities.

(1) Organic loading rates. Aeration tank volumes should be based upon full scale experience, pilot scale studies, or rational calculations based upon commonly accepted design parameters such as food to microorganism ratio, mixed liquor suspended solids, and the solids retention time. Other factors to be considered include size of the treatment plant, diurnal load variations, return flows and soluble organic loads from digesters, or sludge dewatering operations and degree of treatment required. Temperature, pH, and dissolved oxygen concentration are particularly important to consider when designing for nitrification. As a general rate, minimum aeration tank volumes shall be as set forth in the following table. Calculations must be submitted to fully justify the basis of design for any

aeration basins not conforming to these minimum recommendations.

DESIGN ORGANIC LOADINGS

Process	Aeration Tank Organic Loading lb BOD_5 day/1000 cu ft
Conventional[A]	45
Complete Mix	45
Contact Stabilization[B]	50
Extended Aeration	15
Oxidation Ditch[C]	15
Single Stage Nitrification	35

(A) The conventional activated sludge process is characterized by having a plug flow hydraulic regime.

(B) The contact stabilization process divides the aeration tank volume between the reaeration zone and the contact zone. The ratio of reaeration volume to contact volume ranges from 1:1 to 2:1. The hydraulic detention time in the contact zone shall be sufficient to provide removals of soluble substrates to the required levels. For domestic flows, normally two hours is sufficient in the contact zone. Contact zone volume shall be based upon acceptable removal kinetics for soluble BOD5 and ammonia nitrogen.

(C) Oxidation ditches (which are organically loaded consistent with §317.4(g)(1) of this title (relating to Wastewater Treatment Facilities.)) shall have a minimum hydraulic retention time of 20 hours based on design flow. These oxidation ditch systems shall provide final clarification and return sludge capability equal to that required for the extended aeration process. There shall be a minimum of two rotors per ditch, each capable of supplying the required oxygenation capacity and maintaining a minimum channel velocity of 1.0 fps with one rotor out of service. The ditch shall be lined with reinforced concrete or other acceptable erosion-resistant liner material. Provision shall be made to easily vary the liquid level in the ditch to control the immersion depth of the rotor for flexibility of operation. A motor of sufficient size to maintain the proper rotor speed for continuous operation shall be provided. Rotor bearings should have grease fittings that are readily accessible to maintenance personnel. Gear housing and outboard bearings should be shielded from rotor splash.

(2) Aeration basin general design considerations. Aeration tank geometry shall be arranged to provide optimum oxygen transfer and mixing for the type aeration device proposed. Aeration tanks must be constructed of reinforced concrete, steel with corrosion resistant linings or coatings, or lined earthen basins. Liquid depths shall not be less than 8.0 feet when diffused air is used. All aeration tanks shall have a freeboard of not less than 18 inches at peak flow. Access walkways with properly designed safety handrails shall be provided to all areas that require routine maintenance. Where operators would be required to climb heights greater than four feet, properly designed stairways with safety handrails should be provided. The shape of the tank and the installation of aeration equipment should provide a means to control short circuiting through the tank. For plants designed for design flows greater than 2. 0 mgd the total aeration basin volume shall be divided among two or more basins. Each treatment facility shall be designed to hydraulically pass the design two-hour peak flow with one basin out of service.

(3) Sludge pumps, piping, and return sludge flow measurement. The pumps and piping for return activated sludge shall be designed to provide variable underflow rates of 200 to 400 gallons per day per square foot for each clarifier. If mechanical pumps are used, sufficient pumping units shall be provided to maintain design pumping rates with the largest single unit out of service. Sludge piping and/or channels shall be so arranged that flushing can be accomplished. A minimum pipe line velocity of three feet per second is recommended at an underflow rate of 200 gallons per day per square foot. Some method shall be provided to measure the return sludge flow from each clarifier.

(4) Aeration system design.

(A) General design consideration. Aeration systems shall be designed to maintain a minimum dissolved oxygen concentration of 2.0 mg/l at the maximum diurnal organic loading rate and to provide thorough mixing of the mixed liquor. The design oxygen requirements for activated sludge facilities are presented in the following table. The minimum air volume requirements may be reduced with appropriate supporting performance evaluations from the manufacturer.

Process	Minimum O_2 Required lb O_2/lb BOD_5	Minimum[i] Air Required SCF/lb BOD_5
Conventional	1.21	800
Complete Mix	1.21	800
Contact Stabilization	1.21	800
Extended Aeration	2.2	2850
Oxidation Ditch	1.6(2.2)[ii]	-
Nitrification	2.2	3200

(i) Minimum air volume requirements are based upon a transfer efficiency of 4.0% in wastewater for all activated sludge processes except extended aeration, for which a wastewater transfer efficiency of 4.5% is assumed.

(ii) Value in parentheses represents the minimum oxygen requirement for ditch type systems which will achieve nitrification.

(B) Diffused air systems.

(i) Volumetric aeration requirements. Volumetric aeration requirements shall be as determined from the preceding table unless certified diffuser performance data is presented which demonstrates transfer efficiencies greater than those used in the preparation of the table. Wastewater transfer efficiencies may be estimated for:

(I) coarse bubble diffusers by multiplying the clean water transfer efficiency by 0.65;

(II) fine bubble diffusers by multiplying the clean water transfer efficiency by 0.45. The maximum allowable wastewater transfer efficiency shall be 12.0%. Plants treating greater than 10% industrial wastes shall provide data to justify actual wastewater transfer efficiencies. Wastewater oxygen transfer efficiencies greater than 12% are considered innovative technology. See §317.1(a)(2)(C) of this title (relating to General Provisions) for performance bond requirements. Clean water transfer efficiencies obtained at 20 degrees Celsius shall be adjusted to reflect field conditions (i. e., wastewater transfer efficiencies) by use of the following equation:

$$\text{Air Flowrate} = \frac{(\text{lbs. } BOD_5/\text{day})(\text{lbs. } O_2 \text{ Req'd/lb. } BOD_5)}{\text{Required (scfm)} \quad \text{Wastewater T.E.} \times 0.23 \times 0.075 \times 1440}$$

Where: Wastewater T.E. = Wastewater Transfer Efficiency, %

0.23 = lb O_2/lb air @ 20 degrees C

1440 = minutes/day

0.075 = lb air/(cubic foot)

(ii) Mixing requirement. Air requirements for mixing should be considered along with those required for the design organic loading. The designer is referred to Table 14-V, aerator mixing requirements in *Wastewater Treatment Plant Design*, a joint publication of the American Society of Civil Engineers and the Water Pollution Control Federation.

(iii) Blowers and compressors. Blowers and compressors shall be of such capacity to provide the required aeration rate as well as the requirements of all supplemental units such as airlift pumps. Multiple compressor units shall be provided and shall be arranged so the capacity of the total air supply may be adjusted to meet the variable organic load to be placed on the treatment facility. The compressors shall be designed so that the maximum design air requirements can be met with the largest single unit out of service. The blower/compressor units shall automatically restart after a period of power outage or the operator or owner shall be notified by some method such as telemetry or an auto-dialer. The specified capacity of the blowers or air compressors, particularly centrifugal blowers, should take into account that the air intake temperature may reach 104 degrees Farenheit (40 degrees Celsius) or higher and the pressure may be less than standard (14.7 pounds per square inch absolute). The capacity of the motor drive should also take into account that the intake air may be 10 degrees Farenheit (-12 degrees Celsius) or less and may require oversizing of the motor or a means of reducing the rate of air delivery to prevent overheating or damage to the motor.

(iv) Diffusers and piping. Each diffuser header shall include a control valve. These valves are basically for open/close operation but should be of the throttling type. The depth of each diffuser shall be adjustable. The air diffuser system, including piping, shall be capable of delivering 150% of design air requirements. The aeration system piping should be designed to minimize headlosses. Typical air velocities in air delivery piping systems are presented in the following table.

Pipe Diameter (Inches)	Velocity (Feet/min.-Std.Air)
1 - 3	1,200 - 1,800
4 - 10	1,800 - 3,000
12 - 24	2,700 - 4,000
30 - 60	3,800 - 6,500

(5) Mechanical aeration systems. Mechanical aeration devices shall be of such capacity to provide oxygen transfer to and mixing of the tank contents equivalent to that provided by compressed air. A minimum of two mechanical aeration devices shall be provided. Two speed or variable speed drive units should be considered. The oxygen transfer capability of mechanical surface aerators shall be calculated by the use of a generally accepted formula and the calculations presented in the engineering report. Proposed clean water transfer rates in excess of 2.0 pounds per horsepower-hour shall be justified by performance data. In addition to providing sufficient oxygen transfer capability for oxygen transfer, the mechanical aeration devices shall also be required to provide sufficient mixing to prevent deposition of mixed liquor suspended solids under any flow condition. A minimum of 100 horsepower per million gallons of aeration basin volume shall be furnished.

(h) Nutrient removal.

(1) Nitrogen removal. Biological systems designed for nitrification and denitrification may be utilized for the conversion/removal of nitrogen. Various physical/chemical processes may be considered on a case-by-case basis.

(2) Phosphorous removal.

(A) Chemical treatment. Addition of lime or the salts of aluminum or iron may be used for the chemical removal of soluble phosphorous. The phosphorous reacts with the calcium, aluminum, or iron ions to form insoluble compounds. These insoluble compounds may be flocculated with or without the addition of a coagulant aid such as a polyelectrolyte to facilitate separation by sedimentation. When adding salts of aluminum or iron, the designer should evaluate the wastewater to ensure sufficient alkalinity is available to prevent excessive depression of the wastewater or effluent pH. This is of particular importance when the system will also be required to achieve nitrification. The designer is referred to *Nutrient Control*, Manual of Practice FD-7 Facilities Design, published by the Water Pollution Control Federation and the *Process Design Manual for Phosphorus Removal*, published by the Environmental Protection Agency, for additional information.

(B) Biological phosphorus removal. Biological phosphorus removal systems will be considered on a case-by-case basis for systems which can produce operating data which demonstrate the capability to remove phosphorus to the required levels. All biological systems which are required to meet a 1.0 mg/l effluent phosphorus concentration shall make provision for stand-by chemical treatment to ensure the 1.0 mg/l is achieved.

(i) Aerated lagoon.

(1) Horsepower. Mechanical aeration units in aerated lagoons shall have sufficient power to provide a minimum of 1.6 pounds of oxygen per pound of BOD5 applied with the largest unit out of service. If oxygen requirements control the amount of horsepower needed, proposed oxygen transfer rates in excess of 2 pounds per horsepower-hour must be justified by actual performance data. The amount of oxygen supplied or the pounds of BOD5 per hour that may be applied per horsepower-hour may be calculated by the use of any acceptable formula. The combined horsepower rating of the aeration units shall not be less than 30 horsepower per million gallons of aerated lagoon volume.

(2) Construction. Earthen ponds shall have large sections of concrete slabs or equivalent protection under each aeration unit to prevent scouring of the earth. Concrete scour pads shall be used in all areas where the velocity exceeds one foot per second. Earthen ponds shall have protection on the slopes of the embankment at the water line to prevent erosion of the slopes from the turbulence in the lagoon. Where the horsepower level is more than 200 horsepower per million gallons of lagoon volume, the pond embankment at the water line shall be protected from erosion with riprap which may be concrete, gunite, a six-inch thick layer of asphalt-saturated or cement-stabilized earth rolled and compacted into place, or suitable rock riprap. The crest and dry slopes of embankments shall be protected from erosion by planting of grass.

(3) Subsequent treatment–Discharge systems. Aerated lagoon effluent will normally be routed to additional ponds for secondary treatment and to provide sufficient detention time for disinfection. The secondary ponds system shall consist of two or more ponds. Secondary pond sizing shall not exceed 35 pounds of BOD5 per acre per day. Hydraulic detention time in a combined aerated lagoon and secondary pond system shall be a minimum of 21 days (based on design flow) in order to provide adequate disinfection. In designing the secondary ponds, BOD5 removal efficiency in the aerated lagoon(s) may be calculated using the following formula:

$$E = \frac{1}{1+K(V/Q)}$$

Where:

E = efficiency of a complete mix reactor without recycle

K = removal rate constant, day^{-1} (generally 0.5 day^{-1} for domestic sewage)

V = aeration basin volume, million gallons

Q = wastewater flow rate, in million gallons per day

(j) Wastewater stabilization ponds (secondary treatment ponds).

(1) Pretreatment. Wastewater stabilization ponds shall be preceded by facilities for primary sedimentation of the raw sewage. Aerated lagoons or facultative lagoons may be utilized in place of conventional primary treatment facilities.

(2) Imperviousness. All earthen structures proposed for use in domestic wastewater treatment or storage shall be constructed to protect groundwater resources. Where linings are necessary, the following methods are acceptable:

(A) in-situ or placed clay soils having the following qualities may be utilized for pond lining:

(i) more than 30% passing a 200-mesh sieve;

(ii) liquid limit greater than 30%;

(iii) plasticity index greater than 15; and

(iv) a minimum thickness of two feet;

(B) membrane lining with a minimum thickness of 20 mils, and an underdrain leak detection system;

(C) other methods with commission approval.

(3) Distribution of flow. Stabilization ponds shall be of such shape and size to insure even distribution of the wastewater flow throughout the entire pond. While the shapes of ponds may be dictated to some extent by the topography of the location, long narrow ponds are preferable and they should be oriented in the direction of the prevailing winds such that debris is blown toward the inlet. Ponds with narrow inlets or sloughs should be avoided.

(4) Access area. Storm water drainage shall be excluded from all ponds. All vegetation shall be removed from within the pond area during construction. Access areas shall be cleared and maintained for a distance of at least 20 feet from the outside toes of the pond embankment walls.

(5) Multiple ponds. The use of multiple ponds in pond systems is required. The operation of the ponds shall be flexible, enabling one or more ponds to be taken out of service without affecting the operation of the remaining ponds. The ponds shall be operated in series during routine operation periods.

(6) Organic loading. The organic loading on the stabilization ponds, based on the total surface area of the ponds, shall not exceed 35 pounds of BOD5 per acre per day. The loading on the initial stabilization pond shall not exceed 75 pounds of BOD5 per acre per day.

(7) Depth. The stabilization ponds or cells shall have a normal water depth of three to five feet.

(8) Inlets and outlets. Multiple inlets and multiple outlets are required. The inlets and outlets shall be arranged to prevent short circuiting within the pond so that the flow of wastewater is distributed evenly throughout the pond. Multiple inlets and outlets shall be spaced evenly. All outlets shall be baffled with removable baffles to prevent floating material from being discharged, and shall be constructed so that the level of the pond surface may be varied under normal operating conditions. Submerged outlets are recommended to prevent the discharge of algae.

(9) Embankment walls. The embankment walls should be compacted thoroughly and compaction details shall be covered in the specifications. Soil used in the embankment shall be free of foreign material such as paper, brush, and fallen trees. The embankment walls shall have a top width of at least 10 feet. Interior and exterior slope of the embankment wall should be one foot vertical to three feet horizontal. There shall be a freeboard of not less than two feet nor more than three feet based on the normal operating depth. All embankment walls shall be protected by planting grass or riprapping. Where embankment walls are subject to wave action, riprapping should be installed. Erosion stops and water seals shall be installed on all piping penetrating the embankments. Provisions should be made to change the operating level of the pond so the pond surface can be raised or lowered at least six inches.

(10) Partially mixed aerated lagoons.

(A) Horsepower. With partially mixed aerated lagoons, no attempt is made to keep all pond solids in suspension. Mechanical or diffused aeration equipment should be sized to provide a minimum of

1.6 pounds of oxygen per pound of BOD5 applied with the largest unit out of service. Where multiple ponds are used in series, the power input may be reduced as the influent BOD5 to each pond decreases. Proposed oxygen transfer rates in excess of two pounds per horsepower-hour must be justified by actual performance data.

(B) Pond sizing. Partially mixed aerated lagoons should be sized in accordance with the formula in §317.4(i)(3) of this title (relating to Wastewater Treatment Facilities) using K-0.28. Pond length to width ratios should be three to one or four to one.

(C) Imperviousness. Requirements for imperviousness, multiple cells, embankment walls, and inlets and outlets shall be the same as for other secondary treatment ponds.

(k) Facultative lagoon (raw wastewater stabilization pond).

(1) Configuration. The length to width ratio of the lagoon should be three to one, with flow along the length from inlets near one end to outlets at the opposite end (other configurations may be approved if adequate means of prevention of short circuiting are provided). The length should be oriented in the direction of the prevailing winds with the inlet side located such that debris will be blown toward the inlet (generally, the north-northwest side). Inlet baffles shall be provided to collect floatable material. The outlets shall be constructed so that the water level of the lagoon may be varied under normal operating conditions. Storm water drainage shall be prevented from entering the lagoon. The design engineer may wish to locate the facultative lagoon in a central location with regard to the surrounding secondary ponds to facilitate compliance with the buffer zone requirement specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitations and Plant Siting).

(2) Imperviousness. Requirements for imperviousness shall be the same as those for secondary treatment ponds.

(3) Depth. The portion of the lagoon near the inlets shall have a 10 to 12 foot depth to provide sludge storage and anaerobic treatment. This deeper portion should be approximately 25% of the area of the lagoon bottom. The remainder of the pond should have a depth of five to eight feet.

(4) Organic loading. The organic loading, based on the surface area of the facultative lagoon, shall not exceed 150 pounds of BOD5 per acre per day.

(5) Odor control. The facultative lagoon shall have multiple inlets and the inlets should be submerged approximately 24 inches below the water surface to minimize odor but not disturb the anaerobic zone. Capabilities for recirculation at 50% to 100% of the design flow should be provided. Care should be taken to avoid situations where siphoning of lagoon contents through submerged inlets can occur.

(6) Embankment walls. Refer to §317.4(j)(9) of this title (relating to Wastewater Treatment Facilities).

(7) Subsequent treatment. The facultative lagoon effluent will normally be routed to a wastewater stabilization pond system for secondary treatment. In designing the stabilization pond system, it may be assumed that BOD removal in the facultative lagoon is 50%. The stabilization pond system shall contain two or more ponds.

(l) Filtration. Filtration must be employed as a unit operation to supplement suspended solids removal for those treatment facilities with tertiary effluent limitations (suspended solids effluent quality equal to or less than 10 mg/l). Filtration may be employed as a unit operation for those treatment facilities with secondary or advanced secondary effluent limitations. The utilization of filtration in the design of the treatment facility normally provides effective removal of suspended biological floc and neutral density trash material which may remain in secondary clarifier effluent.

(1) General requirements.

(A) Filter units shall be preceded by final clarifiers designed in accordance with §317.4(d) of this title (relating to Wastewater Treatment Facilities) for secondary treatment criteria.

(B) Filtered effluent, and not potable water, shall be utilized as the source of backwash water.

(2) Deep bed, intermittently backwashed granular media filters.

(A) Single media (sand filters), dual media (Anthracite-sand filters), or mixed media filter types (non-stratified anthracite, sand, garnet, or other media) are acceptable for application; however, single media filters shall be designed for maximum filtration runs of six hours between backwash periods.

(B) Design filtration rates shall not exceed three gpm/ft2 for single media filters, four gpm/ft2 for dual media filters, and five gpm/ft2 for mixed media filters. The filter area required shall be calculated utilizing the previously listed specified rates at the design flow of the facility. A minimum of two filter units shall be provided with the required filter area calculated with one unit out of service.

(C) Facilities to provide periodic treatment utilizing chlorine or other suitable agents, introduced to the influ ent stream of the filter units, shall be provided as an operational technique to control slime growth on the filter surface and the backwash storage basin.

(D) A graded gravel layer of a minimum of 15 inches or variable thickness of other filter media support material shall be provided over the filter underdrain system. Filter media support material other than gravel will be reviewed on a case-by-case basis. Normal media depths for the various filter types are as specified following. Media depths significantly different than these must be justified to the commission. The justification must include an analysis of the backwash rates. The uniformity coefficient shall be 1.7 or less. The particle size distribution for dual and mixed media filters shall result in a hydraulic grading of material during back-wash which will result in a filter bed with a pore space graded progressively coarse to fine from the top of the media to the supporting layer.

Filter Type	Type of Media	Minimum Depth (Inches)	Effective Particle Size (mm)
Single Media	Sand	24	1.0 - 4.0
Automatic Backwash	Sand	11	1.0 - 4.0
Dual Media	Anthracite & Sand	16	
	Anthracite	10	1.0 - 2.0
	Sand	6	0.5 - 1.0
Mixed Media	Anthracite, Sand & Other	16	
	Anthracite	10	1.0 - 2.0
	Sand	4	0.6 - 0.8
	Garnet or Similar Material	2	0.3 - 0.6

(E) The unit piping for the filter units shall be designed to return backwash waste to upstream treatment units. In order to minimize a hydraulic surge, a backwash tank must be included into the design for those plants that do not have some means of flow equalization or surge control. A backwash tank shall be designed to provide storage for filter backwash based upon the number of design daily backwash cycles and the volume required for each backwash. Calculations must be provided to the commission demonstrating that the performance of the plant will not diminish with the discharging of the backwash water into the treatment process. Enclosed backwash tanks shall be vented to maintain atmospheric pressure. Surge control shall be provided to the backwash system to limit flow rate variations to no more than 15% of the design flow of the treatment units that will receive the backwash water. For these calculations, an influent lift station is not considered as a treatment unit and, therefore, is not bound by the 15% design flow requirement.

(F) Pumps for backwashing filter units shall be designed to deliver the required rate with the largest pump out of service. The backup pump unit may be uninstalled provided that the commission is satisfied that the spare unit can be quickly installed and placed into operation. Valve arrangement for isolating a filter unit for backwashing shall provide ready access for the operator. Provision for manual override shall be provided for any backwash system employing automatic control.

(G) Head loss indicators shall be provided for all filter units.

(H) Backwash for dual or mixed media filters shall provide a minimum bed expansion of 20%. A surface scour shall be provided prior to or during the backwash cycle. Backwash flow rates at recommended rates of 15 to 20 gpm/ft2 and a recommended cycle time of 10 to 15 minutes should be provided. The backwash cycle shall provide media fluidization at the end of the cycle to restratify the media. Backwash for single media filters should be provided by a combination surface air scour or combination air-water scour and washwater at recommended rates as follows.

Air Scour	3 - 5	$scfm/ft^2$
Water Scour	0.5 - 2	gpm/ft^2
Backwash Water	6 - 8	gpm/ft^2

(I) The filter underdrain system shall be of a design adaptable to wastewater treatment, providing a uniform distribution of filter backwash and freedom from excessive orifice plugging. Wash wa-

ter collection trough bottoms shall be located a minimum of six inches above the maximum elevations of the expanded media. A minimum freeboard of three inches shall be provided in addition to the design upstream depth of the wash water media. A minimum freeboard of three inches shall be provided in addition to the design upstream depth of the wash water trough to prevent submerged trough conditions during filter backwashing.

(3) Multi-compartmented low head filters with continuous operation (automatic backwash). This paragraph contains the design criteria for multi-compartmented low head filters where the applicable criteria are different than those contained in paragraphs (1) and (2) of this subsection. All other criteria included in paragraphs (1) and (2) of this subsection will apply to multicompartmented low head filters with continuous operation.

(A) Filtration rates. Filtration rates shall not exceed three gpm/ft2 for single media filters and four gpm/ft2 for dual media filters based on the design flow rate applied to the filters. The total filter area should be provided in two or more units and the filtration rate shall be calculated on the total available filter area with one cell of each unit out of service. Manufacturer's recommended rates should be utilized if substantiated by test data.

(B) Backwash. The backwash rate shall be adequate to fluidize and expand each media layer a minimum of 20%. Provision should be made for an approximate rate of 10 gpm/ft2 over a 30 to 60 second interval. Manufacturer's recommended rates should be utilized if substantiated by test data. Pumps for backwashing filter units shall be adequate to provide the required rate with the largest pump out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced. Waste filter backwash water shall be returned to upstream units, preferably the final clarifiers, for treatment.

(C) Backwash surge control. The rate of return of waste filter backwash water to treatment units shall be controlled such that the rate does not exceed 15% of the design flow of the treatment units. The hydraulic and organic load from waste backwash water shall be considered in the overall design of the treatment plant. Where waste backwash water is returned for treatment by pumping, adequate pumping capacity shall be provided with the largest unit out of service. It is permissible for the backup unit to be an uninstalled unit, provided that the installed unit can be easily removed and replaced.

(4) Alternative design for effluent polishing. Where filters are proposed to remove remaining visible particles, other criteria will be considered on a case-by-case basis.

§317.5. Sludge Processing.

(a) General requirements.

(1) Disposal requirement, agreement with. Sludge processing and treatment shall be in agreement with the requirements of the ultimate form of disposal.

(2) Control of sludge and supernatant volumes. Provisions shall be made to insure that waste sludge will be discharged to the sludge digester in such a manner so as to minimize the volume of digester supernatant liquor. Provisions shall be made for the return of supernatant from sludge thickeners and digesters to the head of the treatment works or to the aeration system accounting for the impact on the treatment units.

(3) Piping. All piping from clarifiers to thickeners, digesters, or other sludge processing facilities shall be arranged for ease of maintenance and with sufficient hydraulic gradient to insure the flow of sludge. Piping under stationary structures shall be arranged so that stoppages can be readily eliminated by rodding or with sewer cleaning devices. The sludge piping within the digester, including the sludge drain line, shall be a minimum of four inches in diameter. Appropriate facilities for transfer of supernatant liquor shall be provided. Piping shall include means to observe the quality of the supernatant from each of the withdrawal outlets provided. All units shall be capable of being drained independently of one another.

(4) Sludge pumps. Selection of sludge transfer pumps shall be based on both the quantity and character of the anticipated solids load to be handled by them. Where mechanical pumps are used, a sufficient number of pumps shall be provided so that the design pumping capacity is available with the largest sludge pump out of service. Air lift pumps are an acceptable mechanism for sludge transfer. Duplicate design pumping capacity is not required when air lift pumps are used. Pumps used for pumping sludge shall be specifically designed for that purpose. Centrifugal sludge pumps shall have a positive suction head unless they are self-priming or equipped with some other priming device acceptable to the commission.

(5) Sludge stabilization. Sludge stabilization is required for all biological treatment processes with the exception of extended aeration processes (with a solids retention time of 20 days or more) in which case the sludge may be drawn directly to a sludge dewatering facility.

(6) Sizing. Sizing requirements must be determined using the BOD5 and design flow of the raw sewage influent to the plant.

(b) Aerobic digesters.

(1) Sludge thickening. It is recommended that aerobic digesters be provided with sludge thickening capability.

(2) Aeration. Air supplied [illegible] air compressors or blowers through diffusers shall be not less than 30 scfm per 1,000 cubic feet of aerobic digester volume. If a separate system of air compressors or blowers will supply air to the digester, then the compressor or blower system shall be designed so that the air requirements can be met with the largest single unit out of service. If mechanical aerators are used, a minimum of 1.5 horsepower per 1,000 cubic feet must be provided.

(3) Mixing. Adequate mixing of the sludge shall be provided to keep the solids in suspension and to bring the deoxygenated liquid continuously to the aeration device. The amount of mixing shall be based upon the sludge characteristics, the tank geometry, and type of aeration/mixing devices.

(4) Volume. A digester shall provide a minimum sludge retention time of 15 days. The design volume of the aerobic digesters may be calculated using 20 cubic feet per lb BOD5 per day. It is recommended that this volume be provided in two cells capable of operating as a single or two-step unit.

(5) Sludge withdrawal. Provisions shall be made to include an effectiv means of removing solids from the digester.

(c) Anaerobic digesters.

(1) Volume. The following minimum design criteria shall be used in computing the capacity of digesters with and without facilities for heating the sludge undergoing digestion and without sludge thickening ahead of the digester. Variances to the table referenced as follows for minimum digester volume may be granted, provided that it can be demonstrated to the satisfaction of the commission that a minimum solids retention time (SRT) of 30 days will be provided for unheated digesters and a minimum SRT of 15 days will be provided for heated digesters. Heating of the digester means that adequate facilities shall be provided for heating and mixing the sludge and maintaining a year-round temperature of at least 95 degrees Farenheit. Heating coils inside the digester are not acceptable. All heated digesters shall include a thermometer with not less than a four inch dial to indicate the temperature of digester contents. The use of flat-bottomed digestion chambers is not acceptable. In sewage treatment plants employing sludge thickeners, the volume of the digester may be reduced, with sufficient justification, as a result of the thickeners reducing the volum of sludge going to the digester. The calculations for the required sludge digestion volume shall be based on the minimum percent solids in the sludge expected to be encountered.

Type of Sludge	Cubic Feet Per Pound BOD_5 per day: Unheated Digester	Heated Digester
Sludge from primary clarifiers	20.5	14.5
Sludge from primary clarifiers, including Imhoff tanks, plus sludge from clarifiers following trickling filters; sludge from chemical precipitation units, either alone or with sludge from biological treatment unit	26.5	19.0
Sludge from primary clarifiers with waste activated sludge or contact stabilization sludge; sludge from secondary clarifiers	44.0	29.5

(2) Mixing. Adequate mixing of digester contents is required for all first-stage and all single-stage digesters. Mixing may be performed by mechanical

(2) Mixing. Adequate mixing of digester contents is required for all first-stage and all single-stage digesters. Mixing may be performed by mechanical equipment, including external pumps, or by gas recirculation. The rate of mixing shall be such that the flow created in the digester is sufficient to completely mix the incoming sludge with the digester contents and prevent the formation of a scum layer.

(3) Digester covers. Uncovered anaerobic digesters are not acceptable. The sludge and supernatant withdrawal piping for all single-stage and first-stage digesters with fixed covers shall be arranged in such a manner so as to minimize the possibility of air being drawn into the gas chamber ove the liquid in the digester. All digester vers shall include a gas chamber adequate for the gas production anticipated. Digester covers shall be gas tight and the specifications shall require a test of every digester cover for gas leakage.

(4) Gas piping and safety equipment. The gas piping shall be adequate for the volume of gas to be handled and shall be pressure tested for leakage (at 1.5 times the design pressure) before the digester is placed into operation. All gas piping shall slope at least 1/8 inch per foot to provide drainage of condensation in the gas piping. The main gas line from the digester shall have a sediment trap equipped with a drip trap. Drip traps shall be provided at all other low points in gas piping. The gas piping to every gas outlet including the pilot line to the waste gas burner shall be equipped with flame checks or flame traps. It is strongly recommended that a natural or bottled gas source be utilized for the burner pilot. Flame traps with fusible shutoffs shall be included in all main gas lines. The gas line to the waste gas burner shall include a suitable pressure, vacuum, and relief valve. Digester covers shall be equipped with an air vent which includes a flame trap, a vacuum breaker, and pressure relief valve. The main gas line shall be provided with a manometer or other acceptable device which measures the gas pressure in inches of water. Manometers may be used to measure the gas pressure in other gas lines. All manometers shall be vented to the atmosphere outside digester buildings. A gas meter to measure the rate of gas production is desirable and is mandatory on all anaerobic digester systems designed for 1.0 MGD facilities or larger. All rooms in digester buildings with floor level below grade shall be ventilated. Ventilation may be either continuous or intermittent. Ventilation, if continuous, shall provide at least six complete air changes per hour; if intermittent, at least 30 complete air changes per hour.

(5) Other requirements. The discharge end of sludge inlet piping shall be separated from the overflow of the supernatant liquor withdrawal point by a minimum distance equal to the radius of the digester

tank. Every digester shall be provided with an overflow. A means shall be provided by which the level can be varied from which supernatant liquor is withdrawn either automatically or by the operator. If this means is by withdrawal pipes at different levels in the digester, at least three different levels of supernatant liquor withdrawal shall be provided. All supernatant liquor withdrawal systems shall be provided with sampling cocks or other means of inspecting and testing the supernatant liquor from each level. Piping for hot water heating systems may be of any size adequate for the flow. The fresh water supply to hot water heating systems shall be from a tank with an air gap between the top of the tank and the fresh water supply pipe to prevent a cross connection between the digester hot water system and the fresh water supply system.

(6) Treatment of digester supernatant liquor. Supernatant liquor from anaerobic digesters may be treated by chemical means or other acceptable methods before being returned to the plant. If the commonly used method of dosing with lime is employed, the following criteria shall apply: lime shall be applied to obtain a pH of 11.5. The lime feeder shall be capable of feeding 2, 000 mg/1 of hydrated lime or its equivalent. The lime shall be mixed with the supernatant liquor by a rapid mixer or by agitation with air in a mixing chamber. After adequate mixing, the solids shall be allowed to settle. The supernatant liquor treatment system may be a batch or continuous process. If a batch process is used, the mixing and settling may be in the same tank. The sedimentation tank shall have a capacity to hold 36 hours of supernatant liquor but not less than 1. 5 gallons per capita. If a continuous process is used, the sedimentation tank shall have a detention time of not less than eight hours. Solids settled from the supernatant liquor treatment are to be returned to the digester or conveyed to sludge handling facilities. The clarified supernatant liquor shall be returned to the head of the treatment works or to the aeration system.

(d) Other stabilization processes.

(1) Incineration and heat treatment. The equipment shall be housed in a fireproof building. Adequate facilities shall be provided for storage of sludge during the longest period that drying and/or incineration units might normally be out of service for repairs or maintenance. Plans for control of odors, insects, fly ash, and for adequate facilities for the disposal of dried sludge or ash shall be provided to the commission. Prior to construction of an incineration or heat treatment facility, consultation should be made to the Texas Air Control Board for applicable emission standards and the possible requirement for a separate Texas Air Control Board permit.

(2) Composting, wet oxidation, and other processes. Design information given to the commission shall include the demonstrated level of stabilization achieved by the process to be employed. Test results to verify the degree of stabilization may be required. In addition, design information shall address design and/or operational methods to minimize odor, insects, and other nuisance conditions. Sludge storage requirements for each process shall be provided to the commission. Also, the ultimate disposal method for the processed sludge shall be reflected in the waste disposal application.

(e) Sludge dewatering facilities. Sludge shall be dewatered sufficiently to meet the requirements of the ultimate form of disposal.

(1) Sludge drying beds.

(A) Required area. The area of sludge drying beds to be provided will vary in accordance with the average rainfall, average humidity, and type of treatment process used. The required area for aerobic sludge dewatering shall be determined from §317.12 of this title (relating to Appendix D) (for anaerobic sludge dewatering, the value obtained from §317.12 of this title (relating to Appendix D) may be reduced 35% to determine the required area) using a waste load based on sewage strength and the daily average flow of the raw sewage. The bed area sizing requirements shown in §317.12 of this title (relating to Appendix D) are for sludge drying beds utilizing a continuous underdrain media as specified in subsection (e) of this section. Concrete (or similar impervious material) sludge drying beds which do not use an underdrain media may require additional area and will be evaluated on a case-by-case basis; however, in those counties of the state which experience both high rainfall and high relative humidity (Brazoria, Chambers, Fort Bend, Galveston, Hardin, Harris, Jasper, Jefferson, Liberty, Newton, and Orange), it is strongly recommended that other methods of sludge dewatering be utilized in lieu of sludge drying beds Where sludge drying beds are used in those counties of high rainfall and humidity, provisions shall be made in the design of these beds for covering the beds, for means of accelerated dewatering, or for extra storage capacity and alternate dewatering methods to effectively dewater the sludge during inclement weather.

(B) General design features. At least two sludge drying beds shall be provided and they shall be constructed at elevations above groundwater level. Construction shall be such as to exclude surface water runoff from the beds and seepage from the beds into the ground. Channels shall be of sufficient grade and size to facilitate the flow of the sludge to the various beds. Runners should be provided to facilitate sludge handling.

(C) Filtrate. The filtrate (or drainage) from the sludg drying beds shall be returned to the head of the treatment works or to the aeration system.

(D) Sludge removal. A splash block or slab shall be provided at the point where digested sludge is discharged onto each of the beds. Appropriate means shall be provided to facilitate the removal of the dried sludge from the beds for disposal without bed damage resulting. Every sludge drying bed should include a removal gate or stop planks in one end to provide access for machinery and trucks to remove and haul away the dried sludge.

(E) Media. A minimum depth of 12 inches of filtering material, of which four to six inches is coarse sand, is required. To exclude surface water and eroded earth, the bed shall be protected by a permanent wall which shall extend at least 12 inches but not more than 24 inches above the finished surface of the beds.

(2) Vacuum filters, belt filters, belt filter presses, and other mechanical dewatering filters.

(A) Multiple units. Where dewatering of sludge is proposed, the design engineer shall provide data to document sufficient capacity, alternate dis- posal means, or storage facilities capable of maintaining normal daily operations durin breakdowns, upsets, etc.

(B) Filtrate. The filtrate from the filters shall be returned to the head of the treatment works or to the aeration system. Consideration shall be given to the impact of the returned filtrate on the treatment units and to providing odor and insect control facilities.

(3) Portable dewatering units. If sludge is to be treated using portable mechanical dewatering units, provisions shall be made in the facility plan or preliminary engineering report for the location and connection of the portable dewatering unit(s) during facility operation.

§317.6. Disinfection.

(a) General policy. Facilities for disinfection shall be provided to protect the public health and as an aid to plant operation.

(b) Chlorination facilities.

(1) Chlorination equipment. Chlorination equipment shall be selected and installed which is capable of applying desired amounts of chlorine continuously the effluent. Chlorination equipment may also be installed to control odors and generally assist treatment. To accomplish these objectives, points of chlorine application may be established at the head of the plant

for prechlorination, in the effluent chlorine contact chamber, or other suitable locations.

(A) Capacity. Chlorination equipment shall have a capacity greater than the highest expected dosage to be applied. Chlorination systems shall be capable of operating under all design hydraulic conditions. Duplicate equipment with automatic switchover should be considered for standby service, so that continuous chlorination can be provided.

(B) Controls. Means for automatic proportioning of the chlorine amount to be applied in accordance with the rate of effluent being treated is encouraged for all plants and may be required if a maximum chlorine residual is required in the applicable discharge permit. Manual control will be permitted where the rate of effluent flow is relatively constant and for prechlorination applications. Consideration shall also be given to controlling chlorine feed by use of demand.

(C) Measurements. A scale for determining the amount of chlorine used daily, as well as the amount of chlorine remaining in the container, shall be provided.

(D) Safety equipment. Self-contained breathing apparatus shall be available for use by plant personnel. The equipment should be located at a safe distance from the chlorine facilities to insure accessibility. Self-contained breathing apparatus shall be located outside the entrance to the chlorine facility.

(E) Housing. Housing of chlorination equipment and cylinders of chlorine shall be in separate rooms above ground level, with the door opening to the outside, as a measure of safety. Doors should be equipped with panic hardware. The chlorination room should be separated from other rooms by gas- tight partitions and should be equipped with a clear glass, gas-tight window which permits the chlorinator to be viewed without entering the room. Forced mechanical ventilation shall be included in chlorination rooms which will provide a complete air change a minimum of every three minutes. The exhaust equipment should be automatically activated by external light switches and gas detectors that are provided with contact closures or relays. No other equipment shall be installed or stored in the chlorinator room. Vents from chlorinators, vaporizers, and pressure reducing values should be piped to the outdoors at a point not frequented by personnel, nor near a fresh air intake. Detectors and alarms should be located in each area containing chlorine gas under pressure. If gas withdrawal chlorine storage cylinders are subjected to direct sun, pressure reducing devices must be provided at the cylinders. Fire protection devices and fireproof construction is required for all chlorine storage areas. Electrical controls in chlorine facilities must be replaceable or protected against corrosion. Separate, trapless floor drains or a drain to an ample dilution point shall be provided from the chlorine stora*ge room and from liquid feed chlorinator rooms.

(F) Emergency chlorination. Emergency power should be provided for chlorination facilities.

(G) Other. Chlorine rooms shall maintain a minimum temperature of 65 degrees Farenheit. Chlorinate solution should be prepared using treated effluent. If potable water is used, the potable water supply system must be protected by an adequate backflow prevention device. When a booster pump is required, duplicate equipment should be provided.

2) Pellets. The use of pellet systems will be considered for approval on a case-by-case basis.

(3) Chlorine contact chamber design criteria.

(A) Initial mixing. Rapid initial mixing of the chlorine solution and wastewater is essential for effective disinfection. Effective initial mixing can be accomplished by applying the chlorine solution in a highly turbulent flow regime created by in-line diffusers, submerged hydraulic structures, mechanical mixers or jet mixers. The mean velocity gradient in the area of turbulent flow, or G value, shall exceed 500 sec.-1 with residence times of three to 15 seconds. Calculations supporting the design G value shall be presented in the engineering report. Mixing devices for which the mean velocity gradient is difficult to verify shall be justified by pilot or full-scale performance data.

(B) Contact time. Contact chambers shall be designed to provide a minimum average hydraulic residence time (chamber volume divided by flow) of 20 minutes at the design peak hydraulic flow.

(C) Contact chamber configuration. Pipe contact chambers shall be sized so that a scour velocity of at least one foot per second will be obtained at the existing maximum daily dry weather flow rate. If adequate initial mixing is not provided, contact chambers shall have a flow pathway length-to-width ratio of at least 40 and a maximum depth-to-width ratio of no greater than 1.0. This length-to-width ratio may be accomplished by baffling.

(D) Sludge and scum removal. Contact chambers shall either be provided with a means to remove sludge and scum, such as a small hydraulic dredge and skimmers, without taking the contact tank out of service, or shall be configured so that one-half of the contact chamber can be drained for cleaning without interrupting flow through the other half.

(c) Other means of disinfection.

(1) Chemical disinfection is not normally required when the total residence time in the wastewater treatment system (based on design flow) is at least 21 days.

(2) Ultraviolet light (U.V.) disinfection.

(A) General. Ultraviolet disinfection systems are considered applicable to treated wastewaters with daily average BOD 5 and TSS concentrations consistently less than 20 mg/1.

(B) Definitions.

(i) Ultraviolet module–A grouping of UV germicidal lamps of a specified arc length in a quartz or teflon sleeve, sealed and supported in a single stainless steel or some other non-corrosive frame.

(ii) Ultraviolet bank–A grouping of UV modules which span the entire width and depth (of flow) of the reactor.

(C) Sizing, configuration, and required dosage. Ultraviolet disinfection units will be designed in accordance with methodologies presented in the United States Environmental Protection Agency Design Manual, Municipal Disinfection, EPA/625/1-86/021. Turbulent flow is necessary due to non-uniform intensity fields in an ultraviolet reactor. The proposed design shall have a Reynolds' number of greater than 6,000 at average design flows. Disinfection systems shall consist of a minimum of two ultraviolet banks in series and shall be capable of providing disinfection to permitted fecal coliform levels at the design daily average flow with the largest bank out of service.

(D) System details. The ultraviolet unit shall be configured so that there is adequate space for the removal and maintenance of lamps. One person should be able to replace lamps without the aid of mechanical lifting devices, special tools, or equipment. Drains shall be provided to completely drain the ultraviolet reactor unless the equipment can be easily removed from the effluent channel, but lamps shall be replaceable without draining the unit. The materials used to construct the reactor shall be resistant to ultraviolet light. Ballasts and other electrical components shall be consistent with the ultraviolet lamp manufacturer's recommendations. Temporary screens shall be installed to protect the

lamps and other fragile components from construction debris.

(E) Controls. Each individual ultraviolet lamp shall be provided with a remote operation indicator. Lamp failure alarms shall also be provided for a predetermined number of lamp failures. Techniques that result in non-irradiated flow pathways are prohibited. Each ultraviolet bank shall be equipped with at least one ultraviolet intensity meter or some means to monitor changes in ultraviolet dosage; however, intensity meters shall not be relied upon to automatically control system operation. A flow control device, such as an automatic level control, shall be provided to ensure that the lamps are submerged in the effluent at all times regardless of flow rate. The automatic level control shall be arranged so that it will allow suspended solids, which may settle, to be washed out of the area of UV disinfection. Proper heating and ventilation are critical to ultraviolet system operation. Cabi- nets containing ballasts and/or transformers shall be provided with positive filtered air ventilation and automatic shutdown/alarms at high temperatures. Provisions shall also be made to maintain the ultraviolet lamps at or near their optimum operating temperature and to filter ventilating air so as to limit ultraviolet light absorbance by dust accumulations. A separate power meter shall be provided for the ultraviolet system. Elapsed operation time meters shall be provided for each bank of ultraviolet lamps.

(F) Cleaning. Provisions for routine cleaning such as mechanical wipers, high pressure sprayers, ultrasonic transducers, or chemical cleaning agents are required. Quartz sleeve ultraviolet systems shall have a chemical cleaning capability in addition to any ultrasonic and/or mechanical wiper systems. Cleaning solution mix and storage tanks shall have a volume of at least 125% of the reactor volume to be cleaned. A spent cleaning solution disposal plan shall be included in the engineering report.

(G) Safety. Operators shall be protected from exposure to ultraviolet light during normal operations.

(H) Replacement Parts. Replacement part provisions shall be based on:

(i) the following table which summarizes minimum requirements as a percentage of the total provided in the ultraviolet system; or

(ii) a minimum of four replacement lamps, one ballast, two enclosure tubes, and two modules (excluding lamps and enclosure tubes), whichever yields the greatest quantity.

Part Description	Minimum Percent of Total
Lamps	10
Ballast	5
Enclosure Tubes	5
Modules*	2

* (excluding lamps and enclosure tubes)

(3) Disinfection techniques not in widespread use, such as ozonation, bromine chloride, and chlorine dioxide, will be considered for approval on a case-by-case basis. Full details of application, operation, and maintenance; results of pilot and developmental studies; and the effects on the receiving stream and aquatic life shall be furnished to the commission by the design engineer for each proposal.

§317.7. Safety.

(a) General policy. Design of facilities should follow guidelines established under 29 Code of Federal Regulations Parts 1901.1 (OSHA) and other regulatory authorities.

(b) Railings and stairways. Railings should conform with guidelines contained in the Occupational Safety and Health Act, Paragraph 1910.23. Openings in railings must have removable chains. Open valve boxes and pits must be guarded by railings. Refer to §317.4(a)(8) of this title (relating to Wastewater Treatment Facilities) for additional requirements. Steep and vertical ladders are acceptable for infrequent access to equipment. Walkways and steps must have a nonslip finish. Ladders must have flat safety tread rungs and extensions at least one foot out of a vault. Seven feet of clearance shall be provided for overhead piping, unless piping is padded to prevent head injury and warning signs are provided.

(c) Electrical code. Electrical design shall conform to local electrical codes. Where there are no local electrical codes, the design shall conform to the National Electrical Code. Where a flammable gas may exist, all electrical equipment shall conform to the requirements of the National Electrical Code, Chapter 5, Articles 500-510, "Hazardous Locations." The equipment shall bear the seal of the Underwriter Laboratories, Inc. or comply with the National Electrical Code. Adequate lighting must be provided, especially in areas to be serviced by personnel on duty during hours of darkness.

(d) Unsafe water. When non-potable water is made available to any part of the plant, all yard hydrants and outlets shall be properly marked "Unsafe Water," and all underground and exposed piping shall be identified as specified in subsection (g) of this section.

(e) Plant protection. The plant area shall be completely fenced and have lockable gates at all access points. Plants containing open clarifiers, aeration basins, and other open tanks shall be surrounded by an eight-foot fence with a minimum single apron barbed wire outrigger. Livestock fence may be provided in lieu of an eight-foot fence for stabilization ponds, lagoons, overland flow plots, and similar facilities. Hazard signs stating "Danger--Open Tanks--No Trespassing" must be secured to the fence, within visible sighting of each other, as well as on all gates and levees. Plants shall have at least one all-weather access road with the driving surface situated above the 100-year floodplain or be provided by an alternate method of access approved by the commission.

(f) Other safety equipment. The plant as a whole, and hazardous areas in particular, shall be posted in accordance with the Hazardous Communication Act.

(g) Color coding of piping. All piping both exposed and to be buried or located out of view, containing gas, chlorine, or other hazardous materials shall be color coded. Other piping should be color coded. The non-potable waterline should also be

identified with a proper color coding. It is recommended that this line be painted white and that it be stenciled "NON-POTABLE WATER" or "UNSAFE WATER". The following coding is recommended by the Water Pollution Control Federation.

Sludge Line	Brown
Gas Line	Red
Potable Water Line	Blue
Chlorine Line	Yellow
Sewage Line	Gray
Compressed Air Line	Green
Heating Water Lines	Blue with 6" red bands spaced 30" apart
Power Conduit	Orange

(h) Portable ventilators and gas detection equipment. Portable gasoline operated ventilators must be provided for ventilating manholes. Personal gas detectors are required for wear by all personnel whose jobs require entering enclosed spaces capable of having accumulations of hydrogen sulfide or other harmful gases.

(i) Potable water. Potable water should be provided to the plant site. Double check backflow preventers must be provided at the main plant service. Atmospheric vacuum breakers are required at all potable water washdown hoses.

(j) Freeze protection. All surfaces subject to freezing shall be adequately sloped to prevent standing water.

(k) Noise levels. Noise levels in all working areas shall be kept below standards established by the Occupational Safety and Health Act. Removable noise attenuators should not be utilized.

(l) Safety training. Regular safety training shall be provided to all employees.

§317.8. Design And Operation Features.

(a) Laboratory control.

(1) Facilities. Laboratory capability for operational control and testing shall be provided. The laboratory should be located on ground level and easily accessible to the treatment plant and sampling points. The laboratory should be located away from vibrating machinery or equipment which could have an adverse effect on the performance of the operation of laboratory instruments. The extent of the equipment to be provided and the specific tests to be performed will vary according to capacity and type of plant. As a minimum, provisions should be made at all plants so that chemicals and equipment are available for performing such on-site tests as settleable solids (Imhoff cone), 30-minute settleability, dissolved oxygen, pH, and chlorine residual. For plants with a design flow of 1.0 mgd to 5.0 mgd, equipment shall also be provided to determine suspended solids concentration. All plants with design flows in excess of 5.0 mgd shall have access to facilities to provide all permit required compliance monitoring, plus volatile suspended solids, nitrogen series, and alkalinity determinations (if anaerobic sludge digestion is used). Alternately, such tests may be performed under contract with other laboratories. Special consideration, for treatment plants located in remote or vandal prone areas, may be given by the commission to methods for storing chemicals and analytical equipment at an off-site location. Provisions shall be made in all cases to provide for the requirements of the commission self-reporting system procedures and for proper monitoring of significant industrial connections. These requirements are minimum requirements only; additional provisions may be needed to insure optimum plant operations. Raw waste characterization is recommended for all facilities with a design flow in excess of 5.0 mgd and for all facilities anticipating a plant expansion.

(2) Air conditioning. It is recommended that all laboratories be air conditioned and heated to maintain a constant temperature.

(b) Office and toilet facilities. Hand washing facilities should be provided for the protection of operating personnel. Office, showers, toilets, heating, proper lighting, and ventilation shall be provided where operators are to be stationed at the plant for operating shifts. The needs of male and female employees, the handicapped, and visitors to the plant should be considered in the design of sanitary facilities.

(c) Tool shed and work shop. Appropriate facilities should be provided for the storage of tools and spare parts, and a work shop should be provided to allow repairs and maintenance.

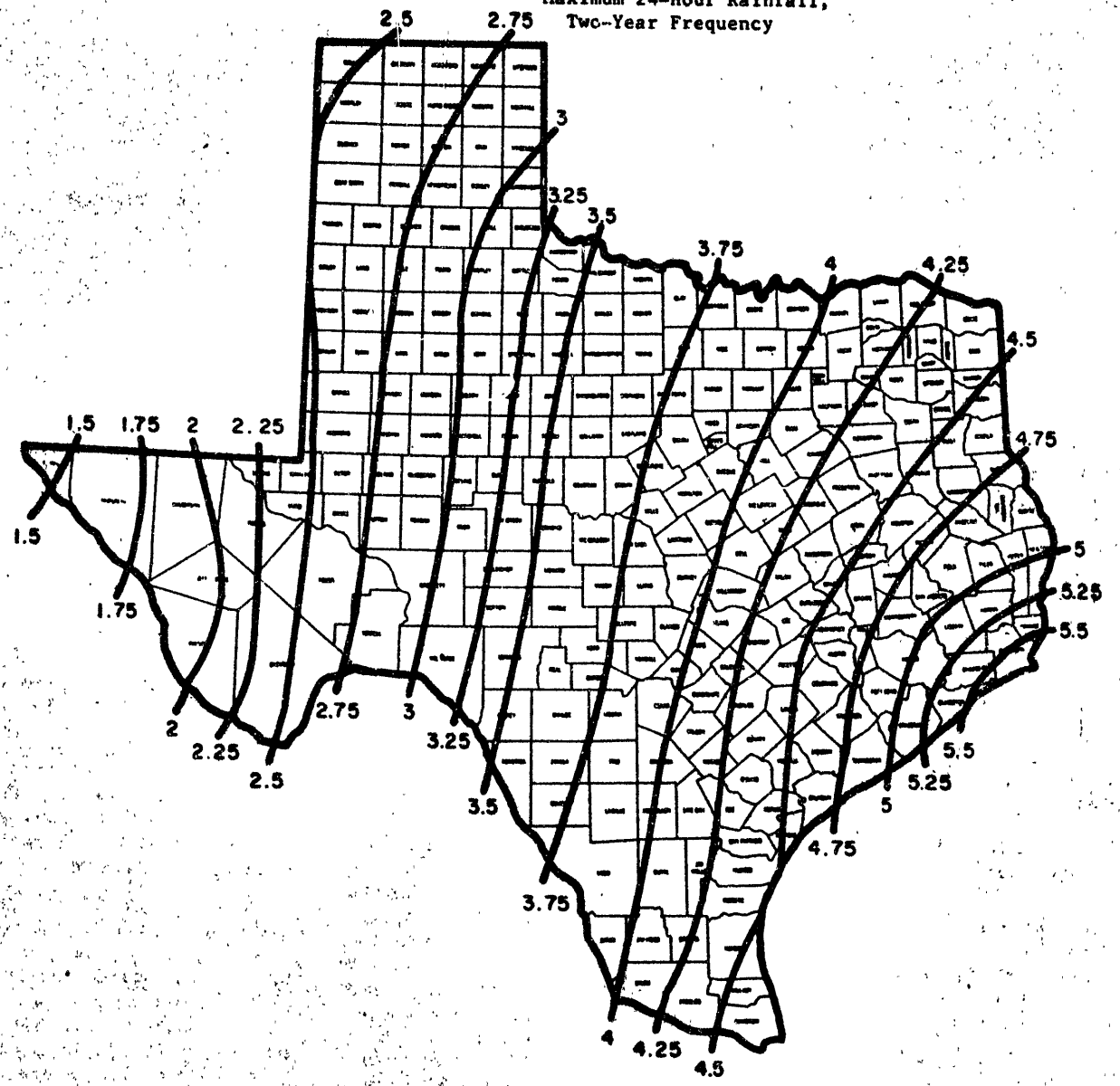
(d) Landscaping and beautification. Upon completion of the treatment plant, the grounds should be properly graded for surface drainage. Asphalt, concrete, gravel, or shell walkways should be provided for access to all treatment units and to the final sampling point. Where possible, steep slopes should be avoided to prevent erosion. Surface water shall not be allowed to drain into any unit. Particular care shall be taken to protect trickling filter beds, sludge drying beds, and intermittent sand filters from storm water runoff. Provision should be made for landscaping and plant site beautification, particularly when a plant is visible to the public.

§317.9. Appendix A. The following map establishes the maximum 24-hour rainfall at a two-year frequency.

APPENDIX A

Rainfall

Maximum 24-Hour Rainfall,
Two-Year Frequency



§317.10. Appendix B–Overland flow process. The overland flow process is the application of wastewater along the upper portion of uniformly sloped and grass covered land and allowing it to flow in a thin sheet over the vegetated surface to runoff collection ditches. The primary objective of this process is treatment of wastewater. Utilization of this process does result in a discharge and therefore a waste discharge permit from the Texas Water Commission is required. This process is best utilized on soils with low permeability. The performance of the overland flow process is dependent on the detention time of the wastewater on the vegetated sloped area. Therefore, in order to meet a specified effluent criteria, the hydraulic loading rate, the application rate, and the effectiveness of the distribution system are essential design considerations. For detailed process design guidance, the latest edition of the Environmental Protection Agency *Technology Transfer Process Design Manual for Land Treatment of Municipal Wastewater* may be used.

(1) Hydraulic loading rate. The hydraulic loading rate and application rate can vary depending on levels of pretreatment, quality of effluent, temperature, and other climatic conditions. A hydraulic loading rate of 1.5 to 2.0 inches per day and an application rate of six to eight gallons per hour per foot of slope width are suggested as general guides. The design rates selected and their justification shall be submitted in the design report.

(2) Wastewater storage. Storage capacity for inclement weather conditions shall be provided. To minimize the impact of algae on the treatment performance, it is recommended this storage be designed as an off-line basin, used only as needed and emptied as soon as possible by blending with other pretreated wastewater prior to application. To control odors, provisions for aeration in the storage basin should be considered.

(3) Soil testing. For the overland flow process, the soil profile evaluation should extend to a depth of at least three feet. The soil sampling and testing specified in subsection (b) of this section shall be representative of the soil to this depth.

(4) Other design considerations.

(A) The overland flow process treatment area shall be subject to the same buffer zone requirement as a treatment plant.

(B) The minimum slope length for the applied wastewater shall be 100 feet.

(C) The sloped areas to receive wastewater shall be uniformly graded to eliminate wastewater ponding and short circuiting for the length of the flow. Site grading procedures and tolerances shall be included in the specifications. Minimum slopes shall equal or exceed 2%; maximum slope shall not exceed 8%.

(D) The application cycle should provide a maximum of 10 hours for dosing followed by a minimum period of 14 hours of resting.

(E) The method of application shall provide uniform coverage of the area.

(F) A vegetative cover shall be provided on the application site. The plant types selected shall be suitable for overland flow conditions and shall provide uniform coverage of soil to prevent short circuiting and channelization of the area.

(G) Wastewater quality and disinfection requirements for overland flow process discharges will be established by the discharge permit.

(H) An effluent sampling station shall be provided prior to discharge to surface waters. The sampling and reporting requirements will be established by the discharge permit.

§317.11. Appendix C–Hyacinth Basins.

(a) Introduction.

(1) Purpose. Hyacinths may be used for the removal of suspended solids from secondary effluent. Other proposed treatment applications, however, are not excluded by these criteria, and such proposals will be reviewed on a case-by-case basis.

(2) Other permits. The authority to use hyacinths is contingent upon obtaining a possession permit from the Texas Parks and Wildlife Department.

(3) Location. Uncovered hyacinth basins will be approved only in Cameron, Hidalgo, Kenedy, and Willacy counties. Hyacinth basins elsewhere shall be covered with a greenhouse structure. A variance will be considered for systems which are designed for seasonal operation. Greenhouse design shall provide for adequate dike top width for equipment maneuverability, doors for personnel and equipment access, and openings for ventilation.

(b) Design.

(1) Multiple basins. Multiple basins shall be provided. Capacity to treat the design flow with one basin out of service shall be provided. A variance may be considered for systems which are designed for seasonal operation. Average water depth of basin shall not exceed 36 inches.

(2) Basin sizing and configuration. Multiple surface inlets and outlets shall distribute flow uniformly through the basin. This may be accomplished by a weir, openings in a baffle, by a perforated pipe, or other methods. Basins of one acre or less in size are required. The bottom of the hyacinth basin shall be sloped to facilitate draining. A surge basin or some other method of flow equalization to achieve a more constant rate of inflow to the basin is desirable.

(3) Barrier. A fixed barrier creating a clear zone shall be installed at the outlet to prevent the discharge of hyacinths or hyacinth seed. While screening may be used as a barrier material, a permeable rock barrier is preferred. Water depth within the outlet area shall not be more than 24 inches with the bottom covered by a layer of broken rock or washed gravel.

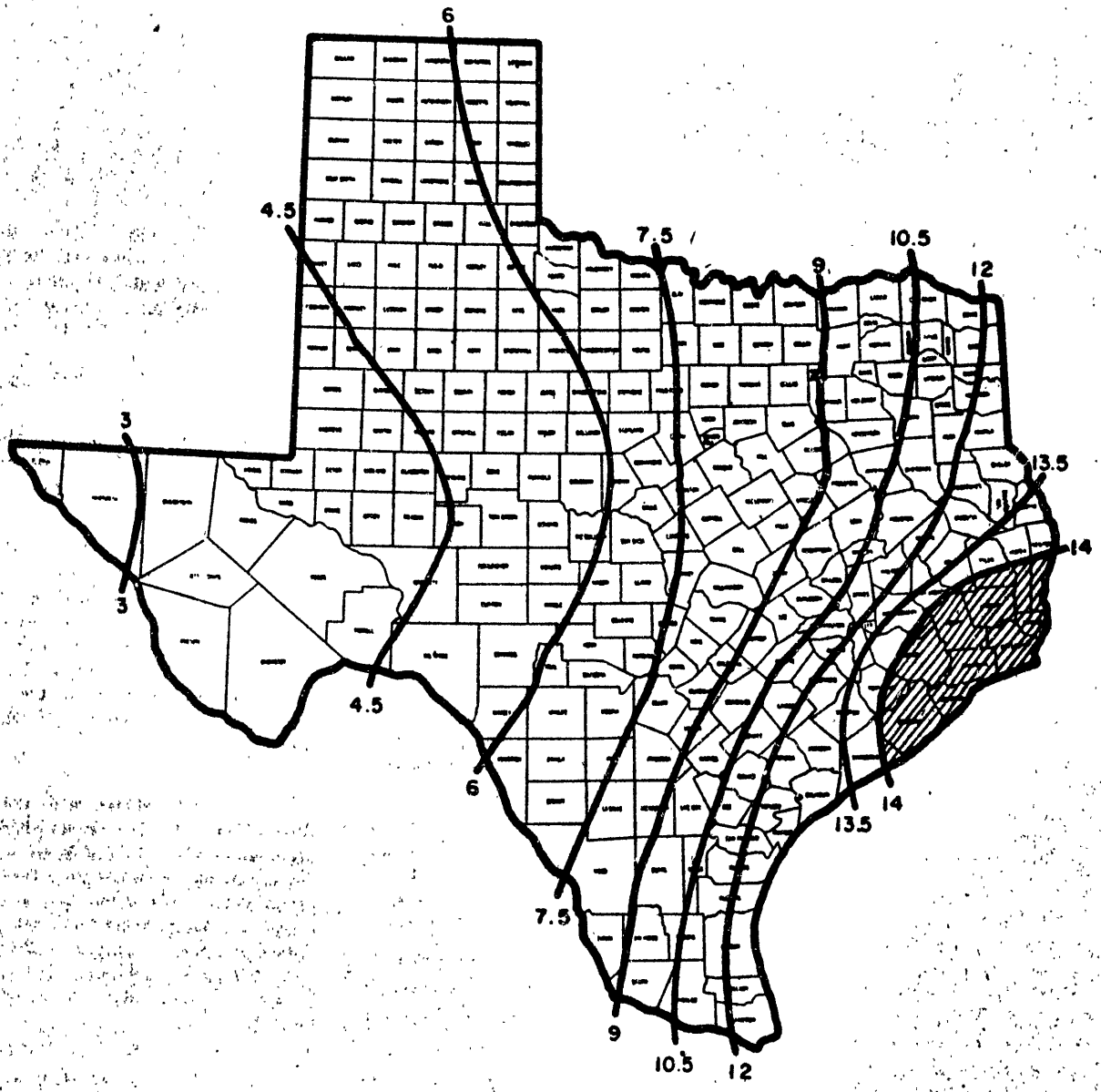
(4) Loading. Organic loading of hyacinth basins shall not exceed 100 lbs/acre/day of BOD5 unless supplemental aeration is provided to consistently maintain an aerobic surface water layer. The maximum hydraulic loading shall not exceed 0.20 mgd/acre.

(5) Natural aerators and mosquito control. Exclosures shall be placed at intervals along basin edges to provide clear zones for aeration and to enhance fish production for mosquito control. Total area of exclosures should be approximately 20% of total basin area. Exclosures shall have a uniform depth of not more than 24 inches, with bottoms lined with broken rock or washed gravel. Plastic sheeting covered with a layer of broken rock or washed gravel, extending above and below operating water level, shall be placed all along inner basin berms to prevent weed growth and eliminate a mosquito breeding habitat.

§317.12. Appendix D. The following map establishes the required area for sludge drying beds with aerobic sludges. For anerobic sludges, the value obtained from the map may be reduced by 35%.

APPENDIX D

Required Area (ft^2/lb. BOD) for Sludge Drying Beds with Aerobic Sludges (Reduce by 35% for Anaerobic Sludges)



Shaded area should have coverage of drying beds or other means of accelerated dewatering.

§317.13. Appendix E-Separation Distances. The following rules apply to separation distances between potable water and wastewater treatment plants, and waterlines nd sanitary sewers.

(a) Water line/new sewer line separation. When new sanitary sewers are installed, they shall be installed no closer to waterlines than nine feet in all directions. Sewers that parallel waterlines must be installed in separate trenches. Where the nine-foot separation distance cannot be achieved, the following guidelines will apply.

(1) Where a sanitary sewer parallels a waterline, the sewer shall be constructed of cast iron, ductile iron, or PVC meeting ASTM specifications with a pressure rating for both the pipe and joints of 150 psi. The vertical separation shall be a minimum of two feet between outside diameters and the horizontal separation shall be a minimum of four feet between outside diameters. The sewer shall be located below the waterline.

(2) Where a sanitary sewer crosses a waterline and the sewer is constructed of cast iron, ductile iron, or PVC with a minimum pressure rating of 150 psi, an absolute minimum distance of six inches between outside diameters shall be maintained. In addition, the sewer shall be located below the waterline where possible and one length of the sewer pipe must be entered on the waterline.

(3) Where a sewer crosses under a waterline and the sewer is constructed of ABS truss pipe, similar semi-rigid plastic composite pipe, clay pipe, or concrete pipe with gasketed joints, a minimum two foot separation distance shall be maintained. The initial backfill shall be cement stabilized sand (two or more bags of cement per cubic yard of sand) for all sections of sewer within nine feet of the waterline. This initial backfill shall be from one quarter diameter below the centerline of the pipe to one pipe diameter (but not less than 12 inches) above the top of the pipe.

(4) Where a sewer crosses over a waterline, all portions of the sewer within nine feet of the waterline shall be constructed of cast iron, ductile iron, or PVC pipe with a pressure rating of at least 150 psi using appropriate adapters. In lieu of this procedure the new conveyance may be encased in a joint of 150 psi pressure class pipe at least 18 feet long and two nominal sizes larger than the new conveyance. The space around the carrier pipe shall be supported at five feet intervals with spacers or be filled to the springline with washed sand. The encasement pipe should be centered on the crossing and both ends sealed with cement grout or manufactured seal.

(b) Water line/manhole separation. Unless sanitary sewer manholes and the connecting sewer can be made watertight and tested for no leakage, they must be installed so as to provide a minimum of nine feet of horizontal clearance from an existing or proposed waterline. Where the nine-foot separation distance cannot be achieved, a carrier pipe as described in subsection (b)(4) of this section may be used where appropriate.

§317.14. Appendix F-Sludge Disposal.

(a) General requirements.

(1) The requirements contained herein shall be minimum requirements for sewage sludge disposal activities. Individual state agencies may impose additional design requirements and/or operating limitations. These criteria are only for typical domestic wastewater sludges and are not intended as criteria for hazardous or industrial sludges.

(2) Persons disposing of sludge shall be subject to the requirements of the particular state agency having jurisdiction over the disposal activitiy.

(b) Jurisdiction.

(1) The commission has jurisdiction over the control of on-site sludge disposal. On-site disposal is defined as a sludge disposal activity that is under the direct control and supervision of the wastewater treatment plant operator and occurs on the same site as the wastewater treatment plant or on property owned or under lease to the owner of the plant.

(2) . The Texas Department of Health has jurisdiction over the control of off-site sludge disposal. Off-site disposal is defined as a sludge disposal activity that is not classifiable as on-site as described in subsection (b)(1) of this section. The Texas Department of Health also has jurisdiction over the control of on-site sludge disposal which involves land used for the production of crops for direct human consumption.

(c) Transportation. Transportation of sludge shall comply with rules of the Texas Department of Health promulgated pursuant to the Texas Solid Waste Disposal Act.

(d) Land application of sludge for beneficial use.

(1) Sludges shall be adequately stabilized prior to land application.

(2) Land application of sludges shall be conducted in a manner that avoids contamination of ground and surface waters.

(3) The site location shall be selected and the site operated in a manner to prevent public health nuisances. Where nuisance conditions exist, the operator shall take necessary action to abate such nuisances.

(4) Sludge application rates shall be determined on the basis of nitrogen available to plants and limitation of heavy metals and toxics. The applicant for a land application site shall demonstrate that the application rate is a beneficial use of the sludge and that the operation can be conducted without endangering public health or the environment. Requests shall address groundwater protection, surface water protection, heavy metal buildup, odors, nuisances, nutrient uptake of vegetation, monitoring, and soil and sludge analyses. Methods and rates of sludge application shall be consistent with the crop rotation plan to be employed and subsequent applications of sludges and fertilizers.

(5) Sludge shall be applied by a method and under conditions that prevent runoff beyond the active application area.

(A) Sludge shall be applied uniformly over the surface of the land.

(B) When applied to unvegetated soils, sludges shall be incorporated into the soil within 48 hours of application. When applied to vegetated soils and not incorporated within 48 hours of application, steps shall be taken to prevent runoff of sludge beyond the active application area.

(C) Sludge shall not be applied during rainstorms or during periods in which surface soils are water saturated.

(D) Sludge shall not be applied to areas having topographical slopes exceeding a limit established by the commission or to frozen soils unless the sludge is incorporated into the soils at the time of application or unless satisfactory design components are presented to the commission to ensure that no runoff will occur from the site.

(E) Sludge shall not be applied within a distance established by the commission to any natural or artificial body of surface water. Where the Texas Water Commission, river authority, or other regional or local water pollution control agency with the authority to establish buffer zones has established buffer zones for water bodies, the application shall conform to those standards.

(F) Sludge shall not be applied closer to a property boundary, public right-of-way, occupied residence, school, institution, or residential or business development than those distances established or approved by the commission or Texas Department of Health.

(G) The previously stated conditions do not apply to municipal wastewater sludges distributed for controlled or uncontrolled use in accordance with requirements of the Texas Department of Health.

(e) Land treatment.

(1) General requirements.

(A) The long-term buildup of heavy metals and salts in the soil surface layers from land treatment of sludges may result in the site becoming unsuitable for agricultural use. Because of potential pathogen an heavy metal buildup, food-chain crops for human consumption shall not be grown on the site except as specifically authorized by permit from the Texas Department of Health.

(B) Normally, only stabilized sludges shall be applied to land treatment sites. Where unstabilized sludge application is proposed, the applicant shall demonstrate that site characteristics, method of application, and other operational provisions are adequate to protect groundwater, surface water, public health, and the environment.

(2) Application of liquid sludges may be accomplished by one or more of the following methods: spraying, overland flow or controlled sheet flow, ridge and furrow irrigation, surface spreading, or subsurface injection. The applicant shall describe the process to be used and stipulate operational methods which will provide protection to groundwater and surface water and reduce odors, vectors, and other health nuisances.

(3) Dewatered sludges shall be applied by using a method which provides for even spreading upon receipt at the site. The sludge may be incorporated into the soil by plowing, disking, or other comparable methods. The applicant shall describe the process to be used and stipulate operational methods which will reduce odors, vectors, and other nuisances while controlling airborne migration of pathogenic organisms from the site.

(4) Sludges are to be applied so that soils can dry sufficiently between applications to allow the passage of equipment, so that application does not create leachate or run-off, and so that the operation is managed to provide adequate aeration of soils. Sludge application shall be terminated when the ground is frozen below the plow line. Sludge shall not be applied during rainstorms or during periods in which surface soils are water-saturated.

(5) The technical report for a land treatment site shall contain the following information:

(A) location of the land treatment site on a 7.5 minute United States Geological Survey topographical map;

(B) photographs of the disposal site in all four directions;

(C) a detailed soils report of the disposal site including permeability, pH, cation exchange capacity in terms of milliequivalents per 100 grams, and groundwaters present;

(D) rate of sludge application, total amount of sludge anticipated to be applied during the life of the project, and the limiting constituent of the sludge;

(E) runoff control measures;

(F) crop types to be utilized and rotation schedules;

(G) character of the sludge prior to application (stabilized, unstabilized, percent solids, etc.); and

(H) analysis of the sludge on a dry-weight basis in terms of milligrams per kilogram for the following parameters: Arsenic, Barium, Cadmium, Chromium, Fluoride, Copper, Lead, Mercury, Zinc, Polychlorinated Biphenyls (PCB), Nitrogen (N03, NH3 and total), Selenium, Endrin, Lindane, Methoxychlor, Toxaphene, 2,4-D (2, 4-Dichlorophenoxyacetic acid), 2,4, 5-TP (Silvex)(2,4, 5-Trichlorophenoxypropionic acid), Radium, Gross Alpha, and Gross Beta.

(6) A closure plan shall be included in the technical report for a land treatment site. In addition, at least 60 days prior to completion of disposal operations or abandonment of the site, the operator shall notify the state agency having jurisdiction over the disposal activity, in writing, of such plans and provide an updated closure plan and a schedule for completion of site closure.

(f) Sludge-only landfill (trench fill).

(1) The technical report for a sludge-only landfill shall address the groundwater and soils present at the site.

(2) Subsurface excavation is required so that the top of sludge layers will be a minimum of three feet below the original ground surface.

(3) The solids content of sludge shall be a minimum of 15%.

(4) The sludge may be stabilized or unstabilized.

(5) The daily cover thickness for stabilized or unstabilized sludge shall be in accordance with requirements established by the commission. The commission may waive the requirement for daily cover of stabilized sludge where odor, vectors, and air mobility of the sludge does not present a problem.

(g) Sludge-only landfill (aerial fill and surface impoundment).

(1) For disposal of sludge, excavation is not necessarily required, and it is not mandatory that sludge be placed below the ground surface. However, if sludge has been placed below the original surface the operator may continue to place sludge that site above the original surface. Surfa impoundments are diked containments. Dikes are constructed on essentially level ground around all four sides of the containment area. Natural steep slopes may be used to form part of the diked system. Access is provided to the top of the dike so that haul vehicles can dump sludge into the impoundment.

(2) Normally, aerial fill and surface impoundments are suitable for managing stabilized sludges. Because of potential odor and other nuisance factors, unstabilized sludges may require special handling if disposed of in an aerial fill or surface impoundment. The applicant shall describe site characteristics and operational methods that will protect groundwater, surface water, and abate odor and nuisance conditions.

(3) Soil or another medium shall be used as a sludge bulking agent to provide stability to the aerial fill or surface impoundment. The bulking ratio shall be that necessary to provide stability to the sludge layers and facilitate operations.

(4) Daily cover shall be at least six inches or that which is necessary to provide a stable surface. A final cover sha be provided and shall be of a thickne prescribed by the commission.

(5) In the technical report for an aerial fill or surface impoundment landfill, a site development plan shall be included. At a minimum, the site development plan shall include information on the following:

(A) the groundwater and soils present at the site;

(B) the source and physical properties of the soil or other medium for sludge bulking;

(C) locations of stockpiles of soil and the area for sludge unloading and mixing;

(D) operational procedures detailing how the sludges are to be mixed, the ratio of the mixture, and the handling and placement of the mixture;

(E) the final contours of the fill with a provision for adding a final cover of clay having a coefficient of permeability of less than IX10-7 centi-meters per secor with top soil added in sufficient depth support vegetation for erosion control;

(F) the final side slopes

which shall not exceed a 4:1 ratio of horizontal to vertical; and

(G) a description of what steps will be taken to ensure that the area shall be properly maintained for drainage after the fill is complete.

(7) Surface impoundments or lagoons used for storage of sludges shall require permitting as sludge management facilities. Typically, storage facilities shall consist of the storage vessels themselves (holding tanks, surface impoundments, lagoons, etc.) and the immediately surrounding property utilized for buffer zones, site security, and associated surface drainage diversion facilities. Factors to be considered in the design of such facilities should include site security; designated property line buffer zones; handling of surface water runoff, including protection from 100-year flood conditions; groundwater protection; odor and nuisance mitigation measures; and the effects of direct precipitation (control of open storage surface levels to accommodate storage needs under anticipated rainfall rates).

(8) An aerial fill or surface impoundment shall not be located closer to single family residences, multiple family residences, public facilities, commercial establishments, or wells used for drinking water by humans or animals than those distances permitted by the commission.

(9) An aerial fill or surface impoundment shall be fenced or other methods shall be used to control access by humans or domestic animals.

(h) Codisposal of sludge at a solid waste landfill. Sludge may be disposed of at a landfill designed for other solid waste, provided that disposal is in accordance with the requirements established by the state agency having jurisdiction for the specific landfill.

(i) Sludge distribution for controlled and uncontrolled use.

(1) The Texas Department of Health is the state agency with jurisdiction over the marketing and distribution of municipal wastewater sludges.

(2) Procedures and operational requirements for marketing and distribution of municipal wastewater sludges shall be as set forth by the Texas Department of Health.

(j) Other means of sludge disposal.

(1) Sludge disposal methods not specifically addressed in the previously listed criteria shall be reviewed by the appropriate state agency as previously defined under §317.14(b) of this title (relating to Appendix F-Sludge Disposal) .

(2) In the technical report, the type of sludge disposal activity shall be detailed as to the pathogen reduction accomplished, life of disposal site, operational requirements, and environmental impacts anticipated.

(3) Sludge disposal shall be such that there is no contamination of ground or surface waters or creation of odor and nuisance conditions as a result of the disposal activity.

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, September 18, 1989

TRD-8908593 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: October 27, 1989

For further information, please call: (512) 463-8087

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter G. Hospital Services

• 40 TAC §29.609

The Texas Department of Human Services (DHS) proposes an amendment to §29. 609, concerning additional reimbursement to disproportionate share hospitals, in its Purchased Health Services rules. The definition of "gross patient revenue" is clarified by specifying the source of the data.

Burton F. Raiford, deputy commissioner for support operations, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the section.

Mr. Raiford 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 explanation of the disproportionate share methodology. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

A copy of this proposal is being sent to each DHS field office where it will be available for public review.

Comments on the proposal may be submitted to Cathy Rossberg, Administrator, Policy Development Services Division-534, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.609. Additional Reimbursement to Disproportionate Share Hospitals.

(a) (No change.)

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

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

(6) Gross patient revenue--Total annual revenue for inpatient care [received by a hospital] from all sources, including Title XVIII and Title XIX funds, **as reported in the inpatient column of the item titled "Total Patient Revenue" on the Statement of Patient Revenues and Operating Expenses worksheet of the Medicare cost report form.**

(7) (No change.)

(c)-(e) (No change.)

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

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

TRD-8908692 Ron Lindsey
Commissioner
Texas Department of
Human Services

Proposed date of adoption: November 20, 1989.

For further information, please call: (512) 450-3765

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Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If proposal is not adopted or withdrawn within six months after the date of publication in the *Texas Register*, it 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 I. Texas Department of Health

Chapter 181. Vital Statistics

Miscellaneous Provision

• 25 TAC §181.22

The Texas Department of Health has withdrawn the emergency effectiveness of new §181.22, concerning the vital statistics. The text of the emergency new appeared in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4177). The effective date of this withdrawal is October 9, 1989.

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

TRD-8908703

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

Effective date: October 9, 1989

For further information, please call: (512) 458-7692

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Adopted Sections

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

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

TITLE 16 ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 11. Surface Mining and Reclamation Division

Subchapter D. Coal Mining

• 16 TAC §11.221

The Railroad Commission of Texas (RRC) hereby adopts for the Surface Mining and Reclamation Division an amendment to 16 TAC §11.221, without changes to the proposed text as published in the March 28, 1989, issue of the *Texas Register* (14 TexReg 1577) and with changes to the regulatory materials to be adopted by reference. In response to a request from an interested party, the public comment period was extended to May 30, 1989, (14 TexReg 2176).

No comments were received regarding the adoption of the amendment. However, comments were received regarding several of the specific revisions to the State Program being proposed for adoption by reference in this rulemaking action. A public hearing was not requested and none was held.

The amendment to §11.221, adopts, by reference specified revisions to the State Program concerning the Coal Mining Regulations, §806.309. The amendment will provide more detailed standards and include definitions of terms, minimum period of continuous operations, minimum ratios of current assets to current liabilities and total liabilities to net worth, maximum self-bond amount, increased financial reporting, limited third-party guarantors, and specific indemnity agreement requirements. They also provide self-bonding requirements for governmental entities.

In accordance with 30 Code of Federal Regulations 732.17, the proposed amendments to the State Program were submitted to the United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSM) on March 21, 1989. The commission received a written response from OSM on June 6, 1989. OSM found all of the proposed amendments under Rulemaking Number SMRD 1-89 to be no less effective than the federal counterpart regulations, with two exceptions as discussed in Part V(3) and Part V(7) of this order. State rulemaking time limits do not permit the consideration in this rulemaking of subsequent relevant OSM comments, if any, regarding revisions to the proposed amendments that are approved by the commission in this final adoption order.

Public comments were received and are on file and available for public inspection in the offices of the Surface Mining and Reclamation Division, 1701 North Congress Avenue, Austin. Some comments were in agreement with the amendments as proposed. For example, the Citizens Action Program commented in favor of the proposed amendments on the basis of their consistent application of established criteria to determine the financial stability of companies wishing to be self-bonded. Others suggested specific changes. The suggested changes are discussed in Part V of this order.

Specific comments are discussed as follows. The Lower Colorado River Authority (LCRA) suggests that at §.309(j)(1)(F) the proposed definition of "net worth" be revised to indicate that net worth is equivalent to owner's equity "or retained earnings." The commenter states that LCRA is a public power agency that does not exist to accumulate wealth for investors and has a net worth that is equivalent to its retained earnings. The retained earnings represent LCRA's equity; but the equity is not owner's equity in the sense that the owner is LCRA. RRC does not concur. The suggested change in the definition of "net worth" was not proposed in this rulemaking. Its adoption herein would not provide adequate notice and opportunity for public comment as required under state rulemaking procedures.

LCRA suggests that it may be impossible for any governmental entity to meet the requirements of proposed §.309(j)(3)(A), and requests that it be deleted in whole. RRC does not concur. Governmental entities as contemplated by §.309(j) are those created and empowered to act by the legislature. If governmental entities are to be self-bonded for surface coal mining and reclamation purposes, without separate surety, it must be clear that each respective governmental entity has been enabled by the legislature to legally enter into and honor such obligations. The commission recognizes that there is no existing statute that explicitly relates self-bonding procedures of particular governmental entities directly to the Texas Surface Coal Mining and Reclamation Act. Consequently, the proposed requirement is for evidence that demonstrates to the satisfaction of the commission that a governmental entity has the requisite authority. Examples that could evidence such authority include, but are not limited to, specific statutory provisions, opinions of the Attorney General or other qualified legal counsel, or rulings by the courts.

OSM comments that the federal self-bonding regulations require standard criteria that all applicants must meet in order to qualify for self-bonding; exceptions are not provided based on the kind of entity applying. OSM states that the proposed regulations at §.309(j)(3)(E)(ii) and (iii) are state initiatives that are less effective than the federal requirements.

RRC concurs. There is no OSM counterpart to the commission's proposed regulations at §.309(j)(3)(E)(ii) and (iii). Under the federal self-bonding regulations all applicants are subject to the same criteria; that criteria was designed primarily to measure the financial status of business entities. OSM stated at 48 *Federal Register* 36423 (1983) that it decided to add the requirements to show financial ratios, based on the requirements for EPA's financial assurance rules for closure and post-closure of hazardous waste facilities, and the background documents supporting those rules. The referenced EPA regulations, however, exempt states and the federal government from the financial assurance rules. See 40 Code of Federal Regulations §264.140(c). Furthermore, a revenue test for municipalities was not adopted by EPA due to the variety of accounting and reporting methods used by municipalities. See 47 *Federal Register* 15042 (1982). The basis for the EPA financial assurance rules is its special study of various ratios of bankrupt and non-bankrupt business firms to determine which ratios have a high predictive success for filing for bankruptcy.

During the commission's previously proposed Rulemakings Number SMRD 2-87 and 1-88, which proposed to adopt the OSM financial criteria, Texas commenters suggested that alternate criteria be adopted for governmental entities due to the fact that they are not usually organized for the purpose of accumulating profits and they are not as subject to financial failure as are private business entities.

In response, the amendments in Rulemaking Number SMRD 1-89 were proposed to include a new §.309(j)(3) to separately address the requirements for a governmental entity. Proposed §.309(j)(3)(ii) and (iii) contain specific references to equivalent criteria. Public comments have been received in this rulemaking that also suggest alternate criteria for adoption. However, because they were not originally included in the proposed amendments, the adoption in this rulemaking of those alternate criteria would not provide adequate notice and an opportunity for public comment as required under state rulemaking procedures.

The commission's proposed regulations at §.309(j)(3)(E)(ii) and (iii) have been modified to be no less effective than the counterpart federal regulations of OSM. These modifications provide some specific equivalent criteria to show the applicant's balanced fiscal position. The modifications are consistent with the other self-bonding criteria, but allow the commission to exercise its judgment on the fiscal position of the applicant for self-bonding.

Kendrick and Pipkin, for the San Miguel Electric Cooperative, Inc., comments that a separate subsection should be added in §.309(j) to address the specific concerns of an electric cooperative. RRC does not concur. A sepa-

rate subsection for electric cooperatives was not included in the proposed amendments and such adoption herein would not provide adequate notice and opportunity for public comment as required under state rulemaking procedures.

Agency Attorney for Texas Municipal Power Agency (TMPA) comments that, in §.309(j)(5)(A), the limitation of total self-bonds to 25% of the tangible net worth of an applicant should not be applicable to governmental entities. The commenter states that TMPA is a municipal corporation and political subdivision of the State of Texas, a public power entity, and is not organized to make a profit or accumulate a large net worth. The commenter states that TMPA, a governmental entity, is not as susceptible to financial failure as are business entities, and that an alternate criteria should be adopted in place of the 25% limitation.

RRC does not concur. A specific alternate equivalent criteria for governmental entities was not proposed in this rulemaking. The adoption herein of an alternate criteria for governmental entities would not provide adequate notice and opportunity for public comment as required under state rulemaking procedures. Proposed §.309(j)(9) provides, in part, that the applicability of the 25% limitation in §.309(j)(5)(A) shall be applied in the commission's normal course of review; only those self-bonds reviewed after the effective date of the amendments adopted in this rulemaking will be subjected to these provisions.

Worsham, Forsythe, Sampels and Wooldridge, for the Texas Mining and Reclamation Association (TMRA) comments in favor of proposed §.309(j)(9) which is a provision that would preserve the self-bonds currently in force with respect to existing mining operations. TMRA suggests that if it should be necessary for some or all of the currently self-bonded permittees to obtain other forms of bonding, a sudden required change could create economic problems for the state's mining and surety industries. RRC concurs. Texas permittees are currently self-bonded in excess of $250 million for surface coal mining operations. Section .309(j)(9) specifically provides that certain aspects of the proposed new criteria shall have prospective application only. This provision will allow those Texas permittees that may be affected, and the commission, an opportunity to better manage any needed transition to other bonds or alternate bonding methods.

OSM comments that the proposed regulation at §.309(j)(9), which provides for prospective application, is less effective and less stringent than the federal regulations in that it allows an already self-bonded permittee to continue its current self-bonding under requirements that previously existed at the time approval was granted, thus not applying the revised financial criteria, as proposed, to these existing self-bonds. All self-bonded permittees under the federal program are required to comply with the existing regulations and amendments to these regulations as they occur.

RRC does not concur. Texas surface coal mining and reclamation operations are currently conducted by a relatively small number of financially stable business and governmental entities. The adoption of §.300(j)(9) will allow Texas permittees an opportunity to continue currently approved self-bonds in effect during a reasonable period of transition in which alternate bonding criteria and methods may be considered. It will also assist the commission in better managing the regulatory process of reviewing and approving replacement bonds or alternative bonding methods after the effective date of the amendments adopted in this rulemaking. In its comment, OSM acknowledges that an alternate set of financial criteria could be considered.

The revised coal mining regulations as adopted by reference are attached to and made a part of this final adoption order for all intents and purposes. They are hereby adopted under Texas Civil Statutes, Article 5920-11, §6 (Vernon Supplement 1989) which authorizes the Railroad Commission of Texas to promulgate rules pertaining to surface coal mining and reclamation operations.

The text of §11.221, State Program Regulations, is not changed by the adoption of this order.

§11.221. State Program Regulations.

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

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

Issued in Austin, Texas, on September 18, 1989.

TRD-8908615 Kent Hance
Chairman
Railroad Commission of Texas

Effective date: October 9, 1989

Proposal publication date: March 28, 1989

For further information, please call: (512) 463-6843

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TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 505. The Board

• 22 TAC §505.8

The Texas State Board of Public Accountancy adopts an amendment to §505.8, without changes to the proposed text as published in the June 30, 1989, issue of the *Texas Register* (14 TexReg 3189).

The amendment states that at the first board meeting of each year, committee members are appointed. The committees will then function at full membership for the entire year.

The amendment will require the board to conduct the first meeting of each year during the month of January.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relatin to board meetings.

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

Issued in Austin, Texas, on September 1, 1989.

TRD-8908724 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: October 11, 1989

Proposal publication date: June 30, 1989

For further information, please call: (512) 450-7066

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• 22 TAC §505.10

The Texas State Board of Public accountancy adopts an amendment to §505. 10, without changes to the proposed text as published in the June 30, 1989, issue of the *Texas Register* (14 TexReg 3189).

The amendment will allow establishment of a committee on substantive rule changes to assist the board in adopting and amending rules.

The amendment enables the committee to meet on a periodic basis, or at the direction of the board, to review existing and contemplated rules to further efficiency and economy in the rule adoption process.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public accountancy with the authority to promulgate rules regarding board committees.

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

Issued in Austin, Texas, on September 1, 1989.

TRD-8908723 Bob E. Bradley
Executive Director
Texas State Board of Public Accountancy

Effective date: October 11, 1989

Proposal publication date: June 30, 1989

For further information, please call: (512) 450-7066

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long Term Care

Subchapter J. Procedures for Covering Certification and Termination of Certification of Long Term Care

Facilities Which Participate in the Title XIX Medical Assistance Program

25 TAC §§145.141-145.147

Texas Department of Health adopts amendments to §§145.141-145.147, without change to the proposed text as published in the April 25, 1989, issue of the *Texas Register* (14 TexReg 1974). The amendments modify the department's procedures covering certification and termination of certification of long term care facilities so that they will conform with the United States Department of Health and Human Services State Operations Manual, Provider Certification, Part Three, Adverse Actions.

The amendments include changing the title of Subchapter J to substitute the words "termination of certification" in lieu of the word "decertification." This change of terminology was made throughout the subchapter and is utilized in accordance with the revised definitions. In addition, throughout the subchapter, the word "resident" has replaced the words "patient or recipient/patient" based on current terminology used in long term care.

The amendment to §145.143 deleted references to specifically named headings or criteria of Texas Department of Human Services standards; instead there is a general reference to all of Human Services standards for certification criteria.

The amendment to §145.144(f)(4)(C) added the federal requirements for termination of certification for repeat deficiencies, deficien- constituting jeopardy to health and safe- and/or deficiencies which limit a facility's pacity to render adequate care.

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

The following comments were received concerning the adoption of the amendments.

Concerning §145.144(f)(4)(C) and §145.146(a)(3)(B), two commenters expressed concern about the concept of repeat deficiencies. The department believes that this concept is clearly defined in Title XIX federal regulations (42 Code of Federal Regulations §442.105), related federal procedures, and the federal state operations manual, and does not require further elaboration.

Concerning §145.144 and §145.146, a commenter requested that the procedures involved in the termination of certification be more specific. The department believes that procedures are specific and clear and that types of terminations and basis for each clearly defined. Therefore, the department has made no change.

Concerning §145.146, a commenter requested clarification in the sections that if a facility does not request an informal reconsideration, the facility does not waive its right to a formal appeal. The department's response is that the proposed amendments to the existing rules do not change the appeal process which clearly gives the facility the right to a formal hearing if the informal route is not taken, therefore, no change has been made.

Concerning §145.146(a), a commenter requested that the language in paragraph (3)(B) regarding adequate care be modified to correspond to the language in paragraph (4)(C). Since the latter paragraph does not exist in §145.146, the department is unable to respond to the specific request. However, the term "adequate care" is described in the Title XIX federal regulations (42 Code of Federal Regulations, §442.105) concerning the state survey agency's decision on certification of a provider when deficiencies exist. The federal regulation clearly requires that the decision to certify must be based on the body of knowledge of the entire operation of the facility. Overall compliance with a complex set of regulations, requirements, and guidelines is part of the decision to determine adequate care and to certify a facility for participation in the medicaid program. Therefore, the department would be unable to alter its rules on adequate care unless there is first a change in federal requirements.

Two organizations commented on the proposal: The Texas Association of Private ICF-MR Providers and the Texas Health Care Association. They gave general support to the proposal but expressed concern about specific provisions.

The amendments are adopted under Human Resources Code, §32.023, and 42 Code of Federal Regulations, Chapter IV, Subchapter C, which provides the Texas Board of Health with the authority to adopt rules concerning the certification and termination of certification of long term care facilities participating in the Title XIX Medical Assistance Program under the United States Social Security Act; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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

Issued in Austin, Texas, on September 18, 1989.

TRD-8906616 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: October 9, 1989.

Proposal publication date: April 15, 1989.

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

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Chapter 181. Vital Statistics

Vital Records

• 25 TAC §181.22

The Texas Department of Health adopts new §181.22, with changes to the proposed text as published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3458).

The new section clarifies the provisions for fee rates set for vital statistics in the State Appropriations Act, Article II-21, 71st Legislature, 1989. The major provisions cover fees charged for: certified copies of death certificates and birth records; search for records or other information filed within the Bureau of Vital Statistics; amendments to complete birth or death records currently on file; amendment based on a court order change of name; new birth record based on adoption, legitimation, or paternity determination; delayed record of birth; and removal of indication of illegitimacy from a birth record.

No comments were received on the proposal; however, the department has clarified the list of fees so that it will follow more closely the schedule of fees in the State Appropriations Act.

The new section is adopted under Texas Civil Statutes, Article 4477, Rule 34a, as amended by Senate Bill 973, 71st Legislature, 1989, which provides the Board of Health with the authority to adopt a rule establishing a schedule of fees for vital statistics services; the State Appropriations Act, Article II- 21, §16, 71st Legislature, 1989, which establishes fee rates for vital statistics services; and Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§181.22. Fees Charged for Vital Records Services.

(a) The purpose of this section is to clarify the provisions concerning certain vital statistic fee rates established by the legislature in the State Appropriations Act, Article II-21, 71st Legislature, 1989.

(b) The fee for a certified copy of a death certificate shall be $8.00 for the first or only copy requested, and $2.00 for each additional copy of the same record requested in the same request.

(c) The fee for a certified copy of a birth record shall be $8. 00. Additional copies shall be $8.00 for each copy requested.

(d) The fee for a search of any record or information on file within the Bureau of Vital Statistics shall be $8.00, regardless of whether a certified copy is issued or not. This fee shall include the cost of one certified copy of the birth, death, or fetal death record requested.

(e) The fee for a search to verify a marriage or divorce record shall be $8.00. No copies, plain, or certified, will be given and only a verification statement will be

issued as required by Texas Civil Statutes, Article 4477.

(f) The fee for a search to verify a birth or death record shall be $8.00, with no copy issued.

(g) The fee for a search and identification of the court which granted an adoption shall be $8.00.

(h) The fee charged for an amendment to complete an existing certificate of death or birth on file within the Bureau shall be $15. An amendment to complete a certificate includes adding information to a record to make it complete and changing information on a record to make it correct. This fee does not include a certified copy of the amended record.

(i) The fee charged for an amendment based on a court order change of name shall be $15.

(j) The fee for a new birth record based upon adoption, legitimation, or paternity determination shall be $25.

(k) The fee for filing a delayed record of birth shall be $25.

(l) The fee to remove indication of illegitimacy from a birth record shall be $25.

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

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

TRD-8908702 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: October 10, 1989.

Proposal publication date: July 18, 1989.

For further information, please call: (512) 458-7692

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Chapter 313. Athletic Trainers

General Requirements and Guidelines

The Advisory Board of Athletic Trainers, with approval of the Texas Board of Health, adopts the repeal of §§313.1-313.13 and new §§313.1-313.17. New §§313.5-313.7, 313.13, and 313.14 are adopted with changes to the proposed text as published in the April 25, 1989, issue of the *Texas Register* (14 TexReg 1999). New §§313.1-313.4, 313.8-313.12, and 313.15-313.17, are adopted without changes and will not be republished.

The new sections replace and update existing department rules concerning the regulation and licensing of athletic trainers. Generally, the new sections reflect changes in the organization of the sections to assist applicants and licensees in understanding and following the sections. Specifically, the new sections add criteria for approval and disapproval of continuing education credits; add a procedure to reissue license certificates and cards; add objective standards of acceptable professional conduct to the code of ethics; clarify the apprenticeship guidelines for applicants; clarify eligibility for examination; and clarify procedures relating to disciplinary action.

In §313.6(b)(1)(A), a commenter requested a wording change to the semesters of apprenticeship to allow different combinations of fall and spring semesters. The board disagrees that more flexibility will enhance the students' training. Therefore, no change was made as a result of the comment.

In §313.6(b)(1) and (2), a commenter said that the numbering appeared to be incorrect. The board's response is that the sections cited were correct and have not changed the rules.

In §313.6, the board revised the apprenticeship requirements to incorporate requirements of current rules which were not fully explained in the proposed rules relating to supervisors, place of apprenticeship and type of experience.

In §313.7(d)(1), a commenter noted the applicants under certain sections of the Athletic Trainers Act could not apply to take the examination. The board agrees and has added application procedures for these individuals.

In §313.7(c), a commenter requested that a national certification examination be used instead of the state examination. The board's response is that the requirements of the examination being given at the state level are set out in the Athletic Trainers Act; therefore, the board did not change the examination.

The board has made minor editorial changes in the final sections for purposes of consistency, language clarity, and intent.

No groups, associations or agencies commented; however, three individuals commented. They were in favor of the rules but offered suggestions and comments as outlined in the summary of comments.

• 25 TAC §§313.1-313.13

The repeal is adopted under Texas Civil Statutes, Article 4512d, §5, which provide the Advisory Board of Athletic Trainers, subject to final approval of the Texas Board of Health, with the authority to adopt rules consistent with the Athletic Trainers Act.

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

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

TRD-8908689 Robert A. MacLean, M.D.
Commissioner
Texas Department of Health

Effective date: October 10, 1989

Proposal publication date: April 25, 1989.

For further information, please call: (512) 458-7546

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• 25 TAC §§313.1-313.17

The new sections are adopted under Texas Civil Statutes, Article 4512d, §5, which provide the Advisory Board of Athletic Trainers, subject to final approval of the Texas Board of Health, with the authority to adopt rules consistent with the Athletic Trainers Act.

§313.5. Educational Requirements.

(a) Purpose. The purpose of this section is to set out the educational requirements for examination and licensure as an athletic trainer.

(b) Degrees. Each applicant must have a baccalaureate or post-baccalaureate degree from a college or university which held accreditation, at the time the degree was conferred, from an accepted regional educational accrediting association as reported by the American Association of Collegiate Registrars and Admissions Officers. The applicant must have:

(1) completed the following:

(A) the athletic training curriculum requirements of a college or university and this chapter; and

(B) at least three semester hours from each of the following course areas:

(i) human anatomy;

(ii) health;

(iii) kinesiology; and

(iv) human physiology physiology of exercise;

(2) a degree in physical therapy; or

(3) a degree in corrective therapy with at least a minor in physical education or health.

(c) Certification required. An applicant must have a current standard first aid and adult cardiopulmonary resuscitation certificate.

(d) Training course required. Applicants who hold a degree or certificate in physical therapy or in corrective therapy with at least a minor in physical education or health must complete a basic athletic training course from an accredited college or university.

(e) General.

(1) The relevance to the licensing requirements of academic courses, the titles of which are not self-explanatory, must be substantiated through course descriptions in official school catalogs or bulletins or by other means acceptable to the board.

(2) The board shall accept a course which an applicant's transcript indicates was not completed with a passing grade for credit.

(3) In evaluating transcripts, the

board shall consider a quarter hour of academic credit as two-thirds of a semester hour.

13.6. Apprenticeship Requirements.

(a) The purpose of this section is to set out the apprenticeship requirements to qualify for examination and licensure as an athletic trainer.

(b) Applicants for examination must satisfactorily complete an apprenticeship in athletic training approved by the board.

(1) The apprenticeship guidelines for applicants qualifying under the Act, §9(1), are as follows.

(A) The program shall be a minimum of three academic years (fall-spring semesters) under the direct supervision of and on the same campus as an approved college or university's full time licensed athletic trainer, or if out-of-state, a NATA certified trainer. A total of 1800 clock hours are required.

(B) The apprenticeship shall be fulfilled while enrolled as a student at the college or university where the apprenticeship is being served. Prior board approval is required to commence an apprenticeship while not enrolled at the institution.

(C) The appenticeship must be a minimum of 600 clock hours per academic year under the direct supervision of the licensed athletic trainer or if out-of-state, the NATA certified trainer, on the field and in the training rooms used for clinical and rehabilitative purposes by that school's intercollegiate athletes. The apprenticeship must offer work experiences in a variety of sports, and includes instruction by the supervising trainer in physical rehabilitations, use of modalities, emergency care, and prevention of injuries. The supervising athletic trainer or NATA trainer must be a full-time employee of the college or university. Hours in excess of 600 per year are not cumulative. Hours in the classroom do not count toward apprenticeship hours.

(2) The apprenticeship guidelines for applicants qualifying under the Act, §9(2) and (3) are as follows.

(A) The program shall be a minimum of 720 hours over a two year period under the direct supervision of an athletic trainer or if out-of-state, a NATA certified trainer. It must include a minimum of 360 hours per year. Hours is excess of [illegible] per year are not cumulative.

(B) A written apprenticeship plan must be submitted with the required application materials.

(i) The supervisor must include his address, license number, telephone number, and place of employment. The plan must include the institutions where the apprenticeship will be completed and a weekly work schedule.

(ii) The supervisor, on behalf of the apprentice, shall enter into a written agreement of affiliation with the appropriate college, university, or secondary school.

(C) Actual working hours shall include a minimum of 20 hours per week during each fall semester.

(D) The apprenticeship shall be completed at a college, university, or secondary school acceptable to the board. It must be served on the field and in the training rooms used for clinical and rehabilitative purposes by that school's student athletes and offer work experiences in a variety of sports. Hours in the classroom do not count toward apprenticeship hours.

(E) The Administrative Services Committee shall review and approve or disapprove individual apprenticeship programs.

(F) Approval of each program shall be obtained prior to commencement of the program. Each program may commence upon receipt of notification from the department that the program has been approved by the Administrative Services Committee.

(3) Documentation of the apprenticeship program must be provided by completion of the proper forms prescribed by the board.

§313.7. Examination for Licensure.

(a) Purpose. This section on examination sets out provisions governing the administration, content, grading, and other procedures for examination for licensure.

(b) Frequency. The board shall offer examinations at least three times a year in April, July, and December.

(c) Form. The examination shall consist of written and oral questions and evaluations prescribed by the board.

(d) Applications for examination.

(1) An applicant must file an application in accordance with §313.4 of this title (relating to Application Requirements and Procedures).

(A) An applicant qualifying under the Act, §(9)(1), may make application for examination if he or she:

(i) is within 30 semester hours of graduation;

(ii) has completed or is enrolled in the courses listed in §313.5(b)(1) of this title (relating to Education Requirements); and

(iii) has completed at least five semesters or is enrolled in the fifth semester of his or her apprenticeship program.

(B) An applicant qualifying under the Act, §9(2) or §9(3), may make an application for examination if he or she has completed the requirements of §313.5 of this title (relating to Educational Requirements) and §313.6 of this title (relating to Apprenticeship Requirements).

(2) The Administrative Services Committee shall review and approve all applications prior to the examination. An applicant meeting the requirements of subsection (d)(1)(A) or (B) of this section or of §313.5 of this title (relating to Educational Requirements) and §313.6 of this title (relating to Apprenticeship Requirements) shall be approved to take the exam. The committee will notify the department of applicants eligible for examination.

(3) If an application is timely filed in accordance with §313.4(b)(2) of this title (relating to Application Requirements and Procedures), the board shall notify an applicant whose application has been approved at least 30 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline.

(4) An examination registration form must be completed and returned to the board by the applicant with the required examination fee (unless otherwise instructed by the board) at least 15 days prior to the date of examination.

(e) Locations. Examinations will be held in locations to be announced by the board.

(f) Grading. Examinations shall be graded by the board or its designee.

(g) Results. The department shall notify each examinee of the results of the examination within 30 days of the date of the examination.

(h) Failures. An applicant who fails the examination prescribed by the board may take the immediately subsequent examination after paying another examination fee.

(i) Withdrawal of application. Any applicant who fails to apply for and take the examination within a period of two years after an examination approval notice is mailed to him or her by the department may have such approval withdrawn by action of the board.

§313.13. Continuing Education Require-

ments.]

(a) Purpose. The purpose of this section is to establish the continuing education requirements which an athletic trainer must complete periodically to maintain licensure. These requirements are intended to maintain and improve the quality of professional services provided in an athletic training program; to keep the licensee knowledgeable of current research, techniques, and practice; and to provide other resources which will improve the skill and competence of the trainer.

(b) Requirements.

(1) Continuing education requirements for license renewal shall be fulfilled during three year periods beginning on the first day following the issuance month and ending on the last day of each licensee's renewal month, except that the initial period shall begin with the date the board issues the license certificate and end on the last day of the third renewal cycle.

(2) At the time the initial license is mailed, each licensee shall be notified of the beginning and ending dates of the licensee's continuing education period and shall be provided forms in accordance with subsection (g) of this section.

(c) Hour requirements for continuing education. A licensee must complete 24 clock hours of continuing education during each three-year period described in subsection (b) of this section.

(1) A clock hour shall be 50 minutes of attendance and participation in an acceptable continuing education experience.

(2) Approval of the Continuing Education Committee must be obtained for each continuing education experience as described in subsection (g) of this section.

(d) Types of acceptable continuing education. Continuing education undertaken by a licensee for license renewal shall be acceptable if the experience falls in one or more of the following categories:

(1) academic courses related to sports medicine;

(2) clinical courses related to sports medicine; or

(3) in-service educational programs, training programs, institutes, seminars, workshops and conferences in sports medicine, and/or athletic training.

(e) Criteria for continuing education approval. Requests for approval of continuing education experience should address the following criteria:

(1) relevance of the subject matter to increase or support the development of skill and competence in athletic training;

(2) objectives of specific information and/or skill to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of programs; including the name of the sponsoring individual(s) or organization(s), and program leaders/faculty if different from sponsors and contact person.

(f) Determination of clock hour credits. Continuing education experiences shall be credited as follows.

(1) Completion of course work at or through an accredited college or university shall be credited for each semester hour on the basis of two clock hours of credit for each semester hour successfully completed for credit or audit as evidenced by a certificate of successful completion or official transcript.

(2) Parts of programs which meet the criteria of subsection (d)(2) and (d)(3) of this section shall be credited on a one-for-one basis with one clock hour credit for each clock hour spent in the continuing education experience.

(3) Completion of a cardiopulmonary resuscitation (CPR) techniques course will be credited a maximum of six clock hours.

(g) Reporting of continuing education. Each licensee shall complete and file with the department an official continuing education report form for each continuing education experience for which credit is claimed.

(1) A licensee shall submit the required report to the department within 30 days following completion of the continuing education experience.

(2) Each report filed by a licensee shall be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) a receipt showing the participant's name, course title, and date; and

(B) a program, brochure, or agenda.

(3) Sponsors may initiate their own requests and may, when approval is obtained in advance, announce such approval in connection with the continuing education experience.

(h) Activities unacceptable as continuing education. The Continuing Education Committee may not grant continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee such as learning occurring from experience or research;

(2) professional organization activity such as serving on committees or councils or as an officer;

(3) any continuing educatio activity completed before or after the peri of time described in subsection (b)(1) this section for which the continuing education credit is submitted except as in accordance with subsection (i)(1) of this section;

(4) self-study continuing education programs or activities;

(5) activities described in subsection (f)(1) of this section which have been completed more than once during the continuing education period; or

(6) performance of duties that are routine job duties and/or requirements.

(i) Failure to complete the required continuing education.

(1) A licensee who has failed to complete the requirements for continuing education may be granted a 90-day extension to the continuing education period by the Continuing Education Committee. Any further extension must be requested in writing prior to the end of the 90-day extension and shall be considered by the board at its next meeting.

(2) A subsequent continuing education period shall end three years from the date the previous continuing education period expired, not the date of the end of the extension period. Credit earned duri the extension period may only be applied the previous continuing education period.

(3) A person who fails to complete continuing education requirements for license renewal may not practice. He or she may be reinstated upon completion of the required continuing education within the given extension period and payment of applicable late renewal fee or license renewal penalty fee.

(4) A person who failed to complete the requirements for continuing education and failed to request an extension to the continuing education period may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the current requirements and procedures for obtaining a license.

(j) Elderly licensees. Any licensee attaining the age of 62 years shall have the continuing education requirement waived.

§313.14. Licensing of Persons with Criminal Backgrounds to be Athletic Trainers.

(a) Purpose. This section sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds obtain licensure as an athletic trainer.

(b) Criminal convictions which irectly relate to the occupation of athletic trainer.

(1) The board may suspend or revoke an existing license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of felony or misdemeanor if the crime directly relates to the duties and responsibilities of an athletic trainer.

(2) In considering whether a criminal conviction directly relates to the occupation of an athletic trainer, the board shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a license to be an athletic trainer. The following felonies and misdemeanors relate to the license of an athletic trainer because these criminal offenses indicate an inability or a tendency to be unable to perform as an athletic trainer:

(i) the misdemeanor of knowingly or intentionally acting as an athletic trainer without a license issued under the Act;

(ii) a misdemeanor and/or felony offense involving moral turpitude;

(iii) a misdemeanor and/or felony offense under various titles of the Texas Penal Code:

(I) Title 5 concerning offenses against the person;

(II) Title 7 concerning offenses against property;

(III) Title 9 concerning offenses against public order and decency;

(IV) Title 10 concerning offenses against public health, safety, and morals; and

(V) Title 4 concerning offenses of attempting or conspiring to commit any offenses in this subsection;

(iv) the misdemeanors and felonies listed in clauses (i)-(iii) of this subparagraph are not inclusive in that the board may consider other particular crimes in special cases in order to promote the intent of the Act and this chapter;

(C) the extent to which a license might offer an opportunity to engage further criminal activity of the same type that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of an athletic trainer. In determining the present fitness of a person, the board shall consider the evidence described in Texas Civil Statutes, Article 6252- 13c, §4(c).

(c) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

(1) The executive secretary shall give written notice to the person that the board proposes to deny the application or suspend or revoke the license after a hearing in accordance with the provisions of §313.17 of this title (relating to Formal Hearings).

(2) If the board denies, suspends, or revokes an application or license under this section, the executive secretary shall give the person written notice:

(A) of the reasons for the decision;

(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for review of the evidence presented to the board and its decision;

(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

(D) of the earliest date that the person may appeal.

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

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

TRD-8906690 Robert A. MacLean, M.D.
Deputy Commissioner for Professional Services
Texas Department of Health

Effective date: October 10, 1989.

Proposal publication date: April 25, 1989.

For further information, please call: (512) 458-7546

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care Aged and Disabled

Eligibility

• 40 TAC §48.2931

The Texas Department of Human Services (DHS) adopts an amendment to §48. 2931, without changes to the proposed text as published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3461).

The justification for the amendment is to make eligibility requirements and waiting list procedures clearer and consistent with Community Care for Aged and Disabled Program guidelines.

The amendment will function by increasing income eligibility guidelines and revising waiting list procedures to address situations in which available funding is not sufficient to serve all eligible clients.

One comment was received from The Association for Retarded Citizens, Texas, supporting the adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

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

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

TRD-8906693 Ron Lindsey
Commissioner
Texas Department of Human Services

Effective date: November 1, 1989.

Proposal publication date: July 18, 1989.

For further information, please call: (512) 450-3765

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Part X. Texas Employment Commission

Chapter 301. Unemployment Insurance

Subchapter 32. Timeliness

• 40 TAC §301.32

The Texas Employment Commission adopts an amendment to §301.32, without changes to the proposed text as published in the August 11, 1989, issue of the *Texas Register* (14 TexReg 3983).

The amendment provides greater detail to the public on the agency's interpretations of when appeals and protests are timely filed.

The interpretations of when appeals and protests are considered timely filed will be applied in unemployment benefit appeals cases considered at various stages of the agency's appeals system.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 5221b, which provide the

Texas Employment Commission with the authority to adopt, amend, or rescind rules as it deems necessary for the effective administration of this Act.

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

Issued in Austin, Texas on September 15, 1989.

TRD-8906625 J. Ferris Duhon
Legal Counsel
Texas Employment
Commission

Effective date: October 9, 1989

Proposal publication date: August 11, 1989

For further information, please call: (512) 463-2291

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

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

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

Health and Human Services Coordinating Council

Friday, September 29, 1989, 9 a.m. The Technical Committee of the Levels of Care Subcommittee of the Health and Human Services Coordinating Council will meet in Room 2301, 4900 North Lamar Boulevard, Austin. According to the agenda, the subcommittee will report on the results of the field test of the Common Application Instructions; report on activities and schedules for training in levels of care and monitoring process; plans for data collection and analysis for the next year.

Contact: Tom Olsen, 311-A, East 14th Street, Austin, Texas 78734, (512) 463-05.

Filed: September 19, 1989, 4:34 p.m.

TRD-8908711

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Texas Historical Commission

Wednesday, October 4, 1989, 1 p.m. The Executive and Architecture Committeesof the Historical Commission will meet at Carrington Covert House Library (THC Administration Building), 1511 North Colorado Street, Austin. According to the agenda, the committees will hold an open meeting to discuss the administration and operation of the Texas Preservation Trust Fund.

Contact: Curtis Tunnell, P.O. BOx 12276, Austin, Texas 78711, (512) 463-6100.

Filed: September 20, 1989, 10:13 a.m.

TRD-8908735

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Texas Department of Human Services

Thursday and Friday, September 28 and 29, 1989, 1 p.m. The Family Violence Advisory Committee Meeting of the Texas Department of Human Services will meet in Classroom 2, West Tower, 2nd Floor, 701 West 51st Street, Austin. According to the agenda, the committee will call to order; welcome and instructions; minutes; announcements; reports; old business; subcommittee meetings; subcommittee reports; next meeting agenda items and date.

Contact:Kathleen Hamilton, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3365.

Filed: September 20, 1989, 3:19 p.m.

TRD-8908783

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Texas State Library and Archives Commission

Thursday, October 5, 1989, 10:30 a.m. The Texas State Library and Archives Commission will meet in Room 314, Lorenzo de Zavala Archives and Library Building, 1201 Brazos, Austin. According to the agenda summary, the commission will approve minutes of the April 6, 1989 meeting; approve library services and construction act long range plan and annual program; consider appeal from Austin Public Library on Dizadvantaged Grant Funding Denial for Govalle Branch Library project; appointments to Library Systems Act Advisory Board and Library Services and Construction Act Advisory Council; review state records management program; review regional historical resource depository and local records program; white house conference and state conference on libraries; committee reports.

Contact: Raymond Hitt, P.O. Box 12927, Austin, Texas (512) 463-5440.

Filed: September 20, 1989, 10:52 a.m.

TRD-8908739

Thursday, October 12, 1989, 2 p.m. The Records Management and Preservation Advisory Committee of the Texas State Library and Archives Commission will meet in Room 314, Lorenzo de Zavala Archives and Library Building, 1201 Brazos, Austin. According to the agenda summary, the presentation of University President's project to reduce paperwork; proposed schedule of presentation on state agency records management programs by RM&PAC representatives; discussion of recommendations to the Legislature due March 1, 1990; report of the status of submission of retention schedules; other business brought before the committee

Contact: Susan Tennison, P.O. Box 2960, Mail Code 833-C, Austin, Texas (512) 450-4557.

Filed: September 20, 1989, 10:52 a.m.

TRD-8908740

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Texas State Board of Medical Examiners

Friday-Saturday, September 29-30, 1989, 8 a.m. daily The Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the board will discuss possible violation of Medical Practice Act; Search Committee meeting; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d) , 5.06(e)(1) and Opinion A.G. 1974, Number H-484.

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

Filed: September 19, 1989, 10:48 a.m.

TRD-8908681

Monday, October 2, 1989, 8:30 a.m. The District Review Committee #3 of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the board will review multiple medical liability cases and investigative files; review of point system; executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(e)(1) and Opinion A.G. 1974, Number H-484.

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

Filed: September 19, 1989, 10:49 a.m.

TRD-8908680

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Texas State Board of Public Accountancy

Friday, September 29, 1989, 9 a.m. The Informal Conferences of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, conferences on complaint numbers: 89-03-04L; 89-03-33L; 89-03-34L; 89-03-05L; 89-03-38L; 89-03-39L and 89-04-36L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: September 20, 1989, 3:32 p.m.

TRD-8908792

Friday, September 29, 1989, 9 a.m. The Technical Standards Review Committee of the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. According to the agenda, the status report: July and August; recommendations regarding specific complaints–licensees: complaint nos. 89-08-04L; 89-08-05L; 89-08-01L; 88-06-29L; 89-07-04L; 89-06-09L; 89-06-03L; 89-07-02L; discussion items: Hinchee; complaint numbers 87-12-17L; 87-10-33L; §8 violation; Shinnick; Womack.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: September 20, 1989, 3:32 p.m.

TRD-8908793

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Public Utility Commission of Texas

Thursday, September 28, 1989, 9 a.m. The Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, there will be an open meeting in which the Commissioners will consider the following dockets: 8666, 8738, 8442, 8608, 8799, 8918, 8924, 8741, 8808, 8844, 8894, 8906, 8907, 8908, 8916, 8931, and Project No. 9028.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 3:52 p.m.

TRD-8908791

Thursday, September 28, 1989, 2 p.m. The Administrative Meeting of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the discussion of: reports; discussion and action on budget and fiscal matters including a report on the status of the lease of PUC offices and a workshop to review the agency's FY 1990 operating budget; consideration of an additional member to the Electro Magnetic Health Effects Committee; staff presentation of a compliance audit of Houston County Electric Cooperative; selection of an auditor to conduct a management audit of West Texas Utilities. Adjournment for executive session to consider: litigation and personnel matters; reconvene for discussions considered in executive session; set time and place for next meeting and final adjournment.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:52 p.m.

TRD-8908755

Friday, September 29, 1989, 9 a.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the commission will discuss Docket Number 9040–Application of Southwestern Electric Service Company for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 19, 1989, 3:50 p.m.

TRD-8908708

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8973–Taylor Telephone Cooperative, Inc., Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:43 p.m.

TRD-8908787

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8974–South Plains Telephone Cooperative, Inc., Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:44 p.m.

TRD-8908785

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8975–Eastex Telephone Cooperative, Inc., Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:44 p.m.

TRD-8908784

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8976–Five Area Telephone Cooperative, Inc., Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:44 p.m.

TRD-8908782

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8977–Lake Dallas Telephone Company, Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:44 p.m.

TRD-8908781

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8978–Fort Bend Telephone Company, Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:44 p.m.

TRD-8908780

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8979–Comanche County Telephone Company, Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:44 p.m.

TRD-8908779

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 8986–Guadalupe

Valley Telephone Cooperative, Inc., Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:45 p.m.

TRD-8908778

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket No. 9039–application of Kerrville Telephone Company compliance with PUC Substantive Rule 23.54, providing for private pay telephone service.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:45 p.m.

TRD-8908777

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 9004–Central Telephone Company of Texas, Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 8757, (512) 458-0100.

Filed: September 20, 1989, 2:45 p.m.

TRD-8908776

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8981–Muenster Telephone Corporation of Texas, Substantive Rule 23. 54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:46 p.m.

TRD-8908773

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8982–Central Texas Telephone Corporation, Inc., Substantive Rule 23. 54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:47 p.m.

TRD-8908772

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8996–Cameron Telephone Company, Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:47 p.m.

TRD-8908771

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8980–Wes-Tex Telephone Cooperative, Inc., Substantive Rule 23.54.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:47 p.m.

TRD-8908770

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8969–Coleman County Telephone Cooperative, Inc., Substantive Rule 23.54, §8, Sheets 6-9.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:47 p.m.

TRD-8908769

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8968–Colorado Valley Telephone Cooperative, Substantive Rule 23.54, §20, Sheets 1-8.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:48 p.m.

TRD-8908768

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8967–GTE Southwest, Inc., Substantive Rule 23.54, §23. Sheets 5, 6, 6A, 7, and 8.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 29, 1989, 2:48 p.m.

TRD-8908767

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8966–Hill Country Telephone Cooperative, Substantive Rule 23.54, §10, Sheets 1, 7-8, and 10.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:48 p.m.

TRD-8908766

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8965–United Telephone Company, Substantive Rule 23.54, §21, Sheets 1-6A.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:48 p.m.

TRD-8908765

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8964–Contel of Texas, Substantive Rule 23.54, Schedule A-1, Sheets 1, 41, and 44.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:48 p.m.

TRD-8908764

September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8960–Lufkin Telephone Exchange, Substantive Rule 23.54, Sheets 113, 114, 115, 115.1, and 118.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:49 p.m.

TRD-8908762

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8961–Conroe Telephone Company, Substantive Rule 23.54, Sheets 102, 103, 104, 104.1, and 107.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.]

Filed: September 20, 1989, 2:49 p.m.

TRD-8908761

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8962–Alto Telephone Company, Substantive Rule 23.54, Sheets 70, 71, 72, 72.1, and 75.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:49 p.m.

TRD-8908760

Friday, September 29, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 8963–San Marcos Telephone Company, Substantive Rule 23.54, §7, Sheets 5, 6, 7, and 8.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:49 p.m.

TRD-8908759

Tuesday, October 3, 1989, 9 a.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the commission will discuss Docket Number 9010–Petition of Houston Lighting and Power Company to continue deferred accounting treatment for STP Unit one beyond November 23, 1989.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 19, 1989, 3:49 p.m.

TRD-8908709

Tuesday, October 3, 1989, 10 a.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 9024–application of Swisher Electric Cooperative, Inc. to change line extension policy.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:48 p.m.

TRD-8908763

Wednesday, October 4, 1989 at 10 a.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the hearing on the merits will be held on Docket No. 8805–application of McLennan County Electric Cooperative, Inc. for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:46 p.m.

TRD-8908775

Thursday, October 5, 1989, 10 a.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the prehearing conference will be held on Docket No. 9043–application of Southwestern Bell Telephone Company for extended area calling service tariff revision.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 20, 1989, 2:46 p.m.

TRD-8908774

Tuesday, October 10, 1989, 1:30 p.m. The Hearings Division of the Public Utility Commission will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, a prehearing conference will be held on Docket Nos. 8585 and 8218–petition of the General Counsel into the reasonableness of the rates and services of Southwestern Bell Telephone Company and inquiry of the General Counsel into the WATS prorate credit.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: Sepember 20, 1989, 2:50 p.m.

TRD-8908756

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Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, September 29, 1989, 9 a.m. The Subcommittee on Joint Ventures and Certification of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet in the Executive Conference Room, Third Floor, Administration Building, 4800 North Lamar Boulevard, Austin. According to the agenda, the committee will discuss subcommittee members and guests; review joint ventures between workshops, work centers, and commercial enterprises; review of recognition/certification of workshops and work centers for purposes of participation under the State set-aside program.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2603.

Filed: September 19, 1989, 2:08 p.m.

TRD-8908700

Friday, September 29, 1989, 10 a.m. The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons will meet in Executive Conference Room, Third Floor, Administration Building, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the committee will introduce guests; acceptance of minutes; discussion and action on rules changes as submitted to the Texas Register; discussion and action on budget subcommittee report; discuss and review of TIBH's FY '90 programs and budget; discussion and action on TIBH's '90 commission rate; discussion had action on: new services; renewal services; contracts with six months provisional approval; new products; product changes and revisions; review of the state set-aside program by the office of the State Auditor; enforcement of mandatory purchasing; annual report to the Legislature and Governor.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2603.

Filed: September 19, 1989, 2:08 p.m.

TRD-8908701

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Office of the Secretary of State

Thursday, September 21, 1989, 10 a.m. The Office of the Secretary of state met for an emergency meeting in Room 127, Secretary of State's Office, Capitol Building, Austin. According to the agenda, place positions were drawn for the Court of Criminal Appeals and 5th Court of Appeals for 1990 elections. The emergency status was necessary because of scheduling conflict.

Contact: Tom Harrison, P.O. Box 12060, Austin, Texas 78711, (512) 463-5650.

Filed: September 20, 1989, 3:23 p.m.

TRD-8908789

Friday, September 22, 1989, 9:30 a.m. The Elections Division of the Office of the Secretary of State met for an emergency meeting in Room 905A, Sam Houston Building, 201 East 14th Street, Austin. The agenda summary included, the examination of Sequoia Pacific Systems Corporation's AVC advantage direct recording electronic voting system for certification by the Secretary of State. The emergency status was necessary due to scheduling conflicts of the examiners which prevented earlier scheduling.

Contact: Tom Harrison, P.O. Box 12060, Austin, Texas 7871, (512) 463-5650.

Filed: September 20, 1989, 3:23 p.m.

TRD-8908788

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Texas Southern University

Friday, October 6, 1989, 10 a.m. The Board of Regents of the Texas Southern University will meet in the University Library, Fifth Floor, Texas Southern University, Houston. According to the agenda, the board will consider minutes; budget changes; investments; budgets for restricted and/or grants and projects funds; construction change orders; payment to architects contractors and engineers; authorization and ratification of contracts and awards; review of on going construction and current contractual relations; personnel actions; report on progress of academic activities and programs; report of the president; executive session.

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

Filed: September 20, 1989, 10:50 a.m.

TRD-8908741

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Teacher Retirement System of Texas

Tuesday, October 3, 1989, 10 a.m. The Board of Trustees Investment Planning Committeeof the Teacher Retirement System will meet at 5950 Berkshire, Suite 300, Dallas. According to the agenda, the board ill discuss duties of investment personnel.

Contact: Mary Godzik, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: September 19, 1989, 3:15 p.m.

TRD-8908706

Tuesday, October 10, 1989, 1:30 p.m. The Retirees Advisory Committee of the Teacher Retirement System will meet in First Floor Conference Room, Aetna/TRS-Care Claim Office, 4402 Piedras Drive West, San Antonio. According to the agenda, the committee will discuss approval of minutes of March 7, 1989, meeting; summary of results of 1988-89 plan year; financial projections through 1995; October 1989 open enrollment report; schedule of events through January 1, 1990; health insurance concerns in the immediate future.

Contact: Stan Blake, 1001 Trinity, Austin, Texas 78701, (512) 397-0550.

Filed: September 19, 1989, 3:15 p.m.

TRD-8908707

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The University of Texas at Austin

Monday, September 25, 1989, 1:30 p.m. The Intercollegiate Athletics Council for of the University of Texas at Austin will meet in Little Colony Room, Four Seasons Hotel, 98 San Jacinto Boulevard, Austin. According to the agennda summary, the council will consider executive session; open session; introduce new council members; approve minutes of May 17, 1989; items from executive session; schedules; awards; academics; budget and budget items; new business; tickets and ticket prices; construction; development; old business.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713.

Filed: September 19, 1989, 2:05 p.m.

TRD-8908699

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Texas Water Commission

Monday, September 25, 1989, 11 a.m. The Hearings Examiners Office of the Texas Water Commission will meet in Room 119, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will discuss a complaint against Phil L. Stover, regarding possible revocation or cancellation of Certificate of Registration Number 2886.

Contact: Mary Sahs, P.O. Box 13087, Austin, Texas (512) 463-7875.

Filed: September 19, 1989, 11:07 a.m.

TRD-8908688

Monday, September 25, 1989, 1 p.m. The Hearings Examiners Office of the Texas Water Commission will meet in Room 119, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will discuss a complaint against Mohammad H. Hamid regarding possible revocation or cancellation of Certificate of Registration Number 2720.

Contact: Mary Sahs, P.O. Box 13087, Austin, Texas (512) 463-7875.

Filed: September 19, 1989, 11:07 a.m.

TRD-8908687

Tuesday, October 3, 1989, 10 a.m. The Texas Water Commission will meet in Room 1-111, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the Texas Water Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas (512) 475-2161.

Filed: September 20, 1989, 11:15 a.m.

TRD-8908736

Thursday, October 5, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will consider various matters within the regulatory jurisdiction of the Texas Water Commission of Texas. In addition, the Texas Water Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Texas Water Commission may take various actions, including but not limited to scheduling an item in the entirety or for particular action at a future date or time.

Contact: Beverly De La Zerda, P.O. Box 13087, Austin, Texas (512) 475-2161.

Filed: September 20, 1989, 11:14 a.m.

TRD-8908737

Tuesday, October 24, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda, the commission will consider renewal of a temporary order for San Antonio Pre-Stressed Company, Inc. to operate a wastewater collection, treatment and recycling facility which serves its concrete manufacturing plant. Plant is located at the north end of Judson Road, north of FM 1604, in Bexar County, Texas. Temporary Order does not authorize discharges into waters in the State.

Contact: Irene L. Montelongo, P.O. Box 13087, Austin, Texas (512) 463-8069.

Filed: September 19, 1989, 11:07 a.m.

TRD-8908705

Tuesday, October 31, 1989, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress, Austin. According to the agenda summary, the commission will discuss application by City of Harlingen, Application Number 5254, for a new water use permit to divert treated sewage effluent for industrial purposes in Cameron County. The effluent will be discharged into Arroyo Colorado, tributary Laguna Madre. This meeting is rescheduled from Tuesday, December 12, 1989.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas (512) 463-8260.

Filed: September 20, 1989, 11:14 a.m.

TRD-8908738

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West Texas State University

Wednesday, September 27, 1989, 2 p.m. The Board of Regents of the West Texas State University will meet in Room 317 Old Main Building, West Texas State University, Canyon. According to the agenda, the board will consider the transfer of governance of West Texas State University to the board of regents of the Texas A&M Univer-

sity System in accordance with the provisions of Senate Bill 64, 71st Texas Legislature, first called session, and any necessary action thereon; executive session as authorized by Texas Civil Statutes, Article 6252. 17, §2(f) and §2(g), (personnel and real estate).

Contact: Texas Smith, Canyon, Texas 79016, (806) 656-2100.

Filed: September 20, 1989, 2:44 p.m.

TRD-8908786

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Regional Meetings

Meetings Filed September 19, 1989

The Central Texas Mental Health and Mental Retardation, Board met at 408 Mulberry Drive, Brownwood, September 25, 1989, at 5 p.m. Information may be obtained from Danny Armstrong, P.O. Box 250, Brownwood, Texas 76801, (915) 646-9574, ext. 102.

The Dewitt County Appraisal District, Appraisal Review Board will meet at Dewitt Appraisal Office, 103 Bailey Street, Cuero, September 26, 1989, at 9 a.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753.

The Heart of Texas Region Mental Health and Mental Retardation, Board of Trustees met at 110 South 12th Street, Waco, September 25, 1989, at 11: 45 a.m. Information may be obtained from Helen Jasso, 110 South 12th Street, Waco, Texas 76701, (817) 752-3451.

The Hood County Appraisal District, Board of Directors, will meet at 1902 West Pearl, Granbury, September 26, 1989, at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471.

The Lamar County Appraisal District, Regular Board, will meet at Lamar County Appraisal District, 521 Bonham Street, Paris, September 26, 1989, at 5 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (214) 785-7822.

The Pecan Valley Mental Health Mental Retardation Region, Board of Trustees will meet at Pecan Valley MHMR Region, Route 3, Building #244, Mineral Wells, September 27, 1989, at 8 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806.

The Sabine River Authority of Texas, Toledo Bend Project Joint Operation-Operating Board will meet at Toledo Bend Dam Site Office, Burkeville, September 26, 1989, at 10 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200.

The San Antonio-Bexar County Metropolitan Planning Organization, Steering Committee will meet at San Antonio City Hall, Basement Conference Room, San Antonio, September 26, 1989, at 1:30 p.m. Information may be obtained from David F. Pearson, Bexar County Courthouse, Room 101, San Antonio, Texas 78205-3002, (512) 227-8651.

TRD-8908651

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Meetings Filed September 20, 1989

The Bosque County Appraisal District, Appraisal Review Board will meet at Bosque County Appraisal District Office, 104 West Morgan, Meridian, September 26, 1989, at 9 a.m. Information may be obtained from Billye McGehee, P. O. Box 393, Meridian, Texas 76665, (812) 435-2305.

The Bosque County Appraisal District, Appraisal Review Board will meet in the District Office, 104 West Morgan, Meridian, September 27, 1989, at 9 a.m. Information may be obtained from Billye McGehee, P.O. Box 393, Meridian, Texas 76665, (812) 435-2305.

The Brazos River Authority, Administrative Policy Committee will meet at 4400 Cobbs Drive, Waco, September 29, 1989, at 11 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Brazos River Authority, Lake Management Committee will meet at 4400 Cobbs Drive, Waco, September 29, 1989, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Central Counties Center for Mental Health and Mental Retardation Services, Board of Trustees will meet at the Sheraton Plaza Hotel, 1721 Central Texas Expressway, Killeen, at 7:45 p.m. Information may be obtained from Michael K. Muegge, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841.

The Mental Health and Mental Retardation Regional Center of East Texas Board of Trustees will meet in the Board Room, 2323 West Front Street, Tyler, September 26, 1989, at 3:30 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Middle Rio Grande Development Council, Board of Directors will meet in the K.C. Hall, 306 Ford Street, Eagle Pass, at 1:30 p.m. Information may be obtained from Mike Patterson, P.O. Box 1199, Carrizo Springs, Texas, (512) 876-3533.

The Middle Rio Grande Development Council, Council (General Assembly) will meet in the K.C. Hall, 306 Ford street, Eagle Pass, at 3:30 p.m. Information may be obtained from Mike Paterson, P.O. Box 1199, Carrizo Springs, Texas, (512) 876-3533.

The Sabine River Compact Administration, will meet in Holiday Inn, 3950 I-10 South, Beaumont, November 9, 1989, at 1:30 p.m. Information may be obtained from Max J. Forbes Jr., 6408 North 16th Street, Orange, TExas 77630, (409) 882-0621.

The Sulphur River Basin Authority, Board of Directors will meet in Mount Pleasant Chamber of Commerce Building, 1604 North Jefferson, Mt. Pleasant, September 26, 1989, 11:30 a.m. Information may be obtained from C. B. Wheeler, P. O. Box 1838, Texarkana, Texas 75504.

The Texas Association of Regional Councils, Annual Membership Meeting will be held in Salon J, San Antonio Marriott Rivercenter, 101 Bowie, San Antonio, September 29, 1989, at 2 p.m. Information may be obtained from Sheila Jennings, 508 West 12th Street, Austin, Texas, (512) 478-4715.

The Texas Municipal Power Agency (TMPA), Board of Directors Special Meeting will meet in Fourth Floor Conference Room, Garland City Hall, 200 North Fifth, Garland, September 26, 1989, at 5 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013.

TRD-8908712

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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

State Banking Board
Notices of Hearing Cancellations

As no opposition has been noted in the application for the New Braunfels National Bank, New Braunfels, to convert to a state charter under the name of Victoria Bank and Trust Company–West, the hearing previously scheduled for Monday, September 18, 1989, has been cancelled.

Issued in Austin, Texas on September 15, 1989.

TRD-8908678 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: September 19, 1989

For further information, please call: (512) 479-1200

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As no opposition has been noted in the application for the First National Bank of Gonzales, Gonzales, to convert to a state charter under the name of Victoria Bank and Trust Company–Central, the hearing previously scheduled for Monday, September 18, 1989, has been cancelled.

Issued in Austin, Texas on September 15, 1989.

TRD-8908679 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: September 19, 1989

For further information, please call: (512) 479-1200

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Texas Department of Health
Request for Proposals

The Texas Department of Health (TDH) intends to implement a Vendor Drug Program (VDP) to supply needed prescription drugs to eligible clients of the Kidney Health Program on a state-wide basis and reduce operating costs. The VDP would involve working with Kidney Health Program (KHP) clients within a specific geographical area, providing for their drug needs and providing specific information to the department concerning the VDP operations to allow assessment of cost effectiveness and client need satisfaction. The project would begin in selected public health regions, but it is expected that the VDP will eventually lead to statewide coverage of KHP clients. The project would involve providing the drugs from a generic-based formulary to the clients, billing the appropriate activities at the established rates and providing financial reports to the department.

General Information. Request for proposal information packets will be available September 27, 1989. Completed proposals must be received by the Texas Department of Health, Kidney Health Program, 1100 West 49th Street, Austin, Texas 78756, not later than the close of business on November 30, 1989.

Length of Funding. The initial funding for the VDP will be 12 months. Additional funding will be determined from the success of the initial funding period.

Pre-Bid Conference. Each applicant who desires to complete a proposal must attend a pre-bid conference to be held at the Texas Department of Health on October 20, 1989.

Contract Award and Requirements. Determination of funding for the VDP will be based on the accepted proposal and may be subject to reduction if budgeting limitations exist. The applicant whose proposal is approved for funding, hereinafter referred to as the provider, will be notified not later than January 10, 1990. The contract with the selected provider will include but is not limited to the following: provider requirements; evaluation/monitoring processes to be performed by both parties; provider reporting requirements; payment/reimbursement schedule; compliance with applicable laws and regulations; procedures for maintenance of financial records and program files; auditing procedures; insurance liability/bonding requirements, if applicable; and termination process.

Qualification of Applicant. Potential providers must ensure that they have the capability, facilities, and all required special resources readily available within the selected geographic area to meet and to satisfactorily perform the services identified in their proposal. The potential provider must have the capability to expand the VDP to a statewide program within a two year period. The TDH will have proprietary rights to all files generated and all computer programs developed and/or used to run the VDP. The potential provider must submit: documentation of ability to perform the work specified; documentation of ability to provide acceptable accounting and financial reporting systems; evaluation mechanisms to measure quality of services provided; assurance that confidentiality of client information is protected; and a proposed plan for statewide implementation of the VDP.

Application Procedure. More detailed information may be obtained from Manuel Zapata, Director, Kidney Health Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7796.

Review of Applicant's Proposal. The department reserves the right to accept or reject any or all proposals submitted. The department is under no legal requirement to execute a resulting contract on the basis of this advertisement. This request does not commit the department to pay any costs incurred prior to the execution of a contract. Each proposal will be evaluated independently. Evaluation criteria will be included in the information packet.

Results of Proposal Review. The proposal selection results will be published in the *Texas Register* and may be obtained by sending a written request and a stamped self-addressed envelope to: Texas Department of Health, Kidney Health Program, 1100 West 49th Street, Austin, Texas 78756.

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

TRD-8908647 Robert A. MacLean, M.D.

Deputy Commissioner for Professional Services
Texas Department of Health.

Filed: September 19, 1989.

For further information, please call: (512) 458-7799

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State Department of Highways and Public Transportation

Notice of Meetings

The State Motor Transportation Advisory Committee (SMTAC), being an informal advisory group comprised of representatives of the public sector and the private sector will meet on October 27, 1989, from 9 a.m. to approximately 3 p.m., at the Texas Motor Transportation Board Room, 700 East 11th Street, Austin, to discuss transportation issues of mutual interest. Topics to be discussed are: activities relating to the State Department of Highways and Public Transportation Central Permit Office; activities relating to Commercial Tax Specialists, Inc.; Crescent Study update; recently passed transportation related legislation; subcommittee reports; and open discussion and future meeting plans.

Inquirers for more information should contact Henry A. Thomason, Jr., P.E., at (512) 463-8672.

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

TRD-8908697 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public Transportation

Filed: September 19, 1989

For further information, please call: (512) 463-8630

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The State Department of Highways and Public Transportation (SDHPT) will hold a series of meetings to receive public input about the proposed Texas Highway Trunk System. The trunk system is part of a long-range plan to develop a rural network of four-lane or better divided roadways. This system will link urban areas in the state, as well as major ports and points of entry from surrounding states and Mexico.

The citizens of Texas have demonstrated an active and concerned interest in transportation. Their input at this time would be greatly appreciated as the department initiates planning for this very important system of roadways. In order to give the maximum opportunity to all concerned parties, it is requested that groups or organizations respectively offer their comments through one representative.

Eight meetings will be held during October and November. Registration begins at 8 a.m., and testimony will be heard from 8:30 a.m. until noon at each meting. Detailed maps and other information about the proposed system will be on display at the meetings. Staff planners from the highway department will make a brief presentation and will be available to answer questions and hear public comments. The meting dates are as follows: Tuesday, October 3, 1989, Westin Paso Del Norte (915) 534-3000, 101 South El Paso Street, El Paso; Thursday, October 5, 1989, Harvey House (806) 358-6161, 3100 West I-40, Amarillo; Tuesday, October 10, 1989, Roadway Inn (817) 640-7080, Highway 360 at Six Flags Drive, Arlington; Thursday, October 12, 1989, Ramada Inn Astrodome, (713) 790-1900, 8111 Kirby Drive, Houston; Friday, October 27, 1989, Wyndham Hotel, Corpus Christi (512) 887-1600, 900 North Shoreline Boulevard, Corpus Christi; Tuesday, October 31, 1989, Holiday Inn (915) 658-2828, 441 Rio Concho Drive, San Angelo; Thursday, November 2, 1989, Holiday Inn Airport (512) 349-9900, 77 North East Loop 410, San Antonio; and Wednesday, November 8, 1989, Academy Auditorium, Camp Mabry, 2200 West 35th Street, (512) 465-7466, Austin.

For further information on the proposed Texas Highway Trunk System, or for answers to specific questions, please contact Mr. Robert Cuellar, Transportation Planning Division, SDHPT, 11th and Brazos Street, Austin, Texas 78701, (512) 465-7466.

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

TRD-8908695 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public Transportation

Filed: September 19, 1989

For further information, please call: (512) 463-8630

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Public Notice

The State Department of Highways and Public Transportation publishes this notice for informational purposes only. In accordance with Title 49 of the Code of Federal Regulations, Part 23, Subpart D, §23.64 (1988) participation by Minority Business Enterprises in Department of Transportation Programs, state transportation agencies who are required to have Minority Business Enterprise Programs and who receive federal-aid highway funds authorized by Title I and Title II, §202, of the Surface Transportation Assistance Act of 1982 or the Urban Mass Transportation Act of 1964, as amended, 49 United States Code 1601, et seq., are required to establish an overall goal of the use of disadvantaged businesses (DBE). Accordingly, the department has submitted to the Federal Highway Administration for fiscal year 1990 a goal of 10% for DBE's. The proposed 10% DBE goal is the same as for FY 1989. Through May, 1989, the department awarded approximately $511 million in federal-aid contracts. The assigned DBE goals on that amount averaged 10%, and the DBE subcontract commitments averaged 10.64%. By the end of FY 1989, the department estimates that approximately $896 million in federal-aid contracts will have been awarded, and subcontract commitments to DBE's will be approximately 10%, or $89.6 million. In FY 1989, the department anticipates awarding approximately $800 million in federal-aid construction contracts. A 10% goal would be $80 million.

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

TRD-8908696 Diane L. Northam
Administrative Procedures Technician
State Department of Highways and Public Transportation

Filed: September 19, 1989

For further information, please call: (512) 463-8630

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Texas Department of Human Services

Public Notice

The Texas Department of Human Services (DHS) has published a report outlining its intended use of federal block grant funds during fiscal year 1990 for Title XX social services programs. To obtain free copies of the report, send written requests to Cathy Rossberg, Adminis-

trator, Policy Development Services Division, Mail Code 222-E, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

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

TRD-8908804 Ron Lindsey
Commissioner
Texas Department of Human Services

Filed: September 19, 1989.

For further information, please call: (512) 450-3765

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State Purchasing and General Services Commission

Notice of Request for Information

Pursuant to the authority of Texas Civil Statutes, Article 601b, the State Purchasing and General Services Commission is considering the acquisition of a statewide utility data network that will include all components except the intrastate inter-LATA transport. In order to evaluate the feasibility, cost-effectiveness, and efficiency of this proposed course of action, the commission has issued a request for information in order to solicit information from interested and knowledgeable parties.

A copy of the request for information, which requires that all responses be received by 5 p.m. on October 16, 1989, may be obtained from: Grover Mitchell, Engineering and Planning Manager, State Purchasing and General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047, (512) 475-2376.

Issued in Austin, Texas on September 19, 1989.

TRD-8908710 John R. Neel
General Counsel
State Purchasing and General Services Commission

Filed: September 19, 1989

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

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State Committee of Examiners for Speech-Language Pathology and Audiology

Correction of Error

The State Committee of Examiners for Speech-Language Pathology and Audiology submitted amendments which contained errors as published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3454-3456). On behalf of the committee, the Texas Department of Health requested a correction of error be published for these amendments. The correction of error notice was published in the August 11, 1989 issue of the *Texas Register* (14 TexReg 4004) and again in the September 15, 1989 issue of the *Texas Register* (14 TexReg 4808). Each time the notice was published in error under the heading "Texas Department of Health". The following are corrections to the previously mentioned rules.

On pages 14 TexReg 3454-3456, under title 22, Part XXXII, State Committee of Examiners for Speech-Language Pathology and Audiology, the following errors need to be corrected.

Concerning §741.162(f)(2), new subparagraphs (A) and (B) are new language and should be printed entirely in bold print. The new subparagraphs as published contained three different print types (normal, bold,and italics).

Concerning §741.181, paragraph (16) and paragraph (17)[16] are combined and should be separated by a line space.

Concerning the proposed amendments to §§741.193, 741.194, 741.198, and new §741.199, the subchapter title is missing. The missing subchapter title is "Subchapter K. Denial, Suspension, or Revocation of Licensure".

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Texas Water Commission

Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Igloo Products Corporation, Permit 02229-01 on September 15, 1989, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Kevin McCalla, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 18, 1989.

TRD-8908885 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 19, 1989

For further information, please call: (512) 463-8069.

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to the City of Morgan, Permit 12217-01 on September 15, 1989, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Shaver, Enforcement Coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 18, 1989.

TRD-8908884 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 19, 1989

For further information, please call: (512) 463-8069.

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An amended enforcement order was issued to the Town of Marshall Creek, Permit 11072-01 on September 18, 1989, assessing $480 in stipulated penalties, and deferring and

waiving $5,000 penalties pending compliance of two years.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 18, 1989.

TRD-8908683 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 19, 1989

For further information, please call: (512) 463-8069.

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An amended enforcement order was issued to the Town of Valley View, Permit 11164-01 on September 18, 1989, assessing $2,700 in stipulated penalties to be deferred and waived pending one-year compliance.

Information concerning any aspect of this order may be obtained by contacting Wendall Corrigan, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 18, 1989.

TRD-8908682 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 19, 1989

For further information, please call: (512) 463-8069.

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to A&S Dairy, on September 15, 1989, assessing $4,800 in administrative penalties, $3,600 in deferred penalties, and imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Sharon J. Smith, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on September 18, 1989.

TRD-8908684 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: September 19, 1989

For further information, please call: (512) 463-8069.

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Notice of Application For Waste Disposal Permit

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of September 11-15, 1989.

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

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463-7905.

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

Keeshan and Bost Chemical Company, Inc.; Manvel; organic chemicals manufacturing plant; on the south side of State Highway 6, about two miles east of the City of Manvel, Brazoria County; 02068; amendment.

Fina Oil and Chemical Company; Port Arthur; Port Arthur petroleum refinery; on the northwest corner of State Highway 87 and FM Road 366 and northeast of the City of Groves, Jefferson County; 00491;

Wayne Johnson doing business as Fabens Delinting Plant; Fabens; cottonseed delinting plant; at the intersection of East First Street and Railroad Row in the Community of Fabens, El Paso County; 00516; renewal.

City of Iredell; wastewater treatment facility; approximately 1,000 feet south of the North Bosque River, approximately 700 feet east of the intersection of Kidd and Meridian Streets on the east side of Iredell in Bosque County; 11565-01; renewal.

City of Brenham; wastewater treatment facility; 2005 East Alamo Street, south of and adjacent to Hog Branch in the City of Brenham in Washington County; 10388-01; renewal.

City of Richmond; North Second Street Wastewater Treatment Plant; at the southeast corner of the intersection of Ferry Street and North Second Street in City of Richmond in Fort Bend County; 10258-01; renewal.

North Texas Municipal Water District; Wylie; Wilson Creek Wastewater Treatment Facility; southwest of Wilson Creek at the confluence with Lake Lavon and approximately five miles southeast of the City of McKinney in Collin County; 12446-01; renewal.

Meadows Municipal Utility District; Stafford; wastewater treatment facility; approximately 5,000 feet west of the Southwest Freeway (U.S. Highway 59) and 1, 000 feet south of Keegans Bayou on the Harris County-Fort Bend County line; 11039-01; renewal.

Memorial Villages Water Authority; Gaylord; wastewater treatment facility; approximately 1,500 feet south by southwest of the San Felipe Drive Bridge where it crosses Buffalo Bayou and approximately 1,500 feet south by southeast of the intersection of San Felipe Drive and Farnham Park and east of the terminus of Farnham Park in

Harris County; 10584-01; renewal.

Border Steel Mills, Inc.; El Paso; industrial hazardous and non-hazardous waste management facility; on a 121-acre tract of land on Interstate Highway 10 at the Vinton exit, 18 miles northwest of El Paso, El Paso County; HW-50119, EPA ID Number TXD-00[illegible]98175; new; 45-day notice.

Asarco, Inc.; Amarillo; copper refinery; 568 feet from the east line and 3, 054 feet from the north line of Section 68, Block 2 of the Adams, Beaty, and Moultron Survey, approximately eight miles northeast of the City of Amarillo, Potter County; WDW-129; renewal.

Issued in Austin, Texas, on September 15, 1989.

TRD-8908613 Brenda W. Foster
Chief Clerk
Texas Water Commision

Filed: September 18, 1989

For further information, please call: (512) 463-7906

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