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Texas Register

Volume 14, Number 84, November 14, 1989

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Withdrawn Sections—sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

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

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

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*;

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



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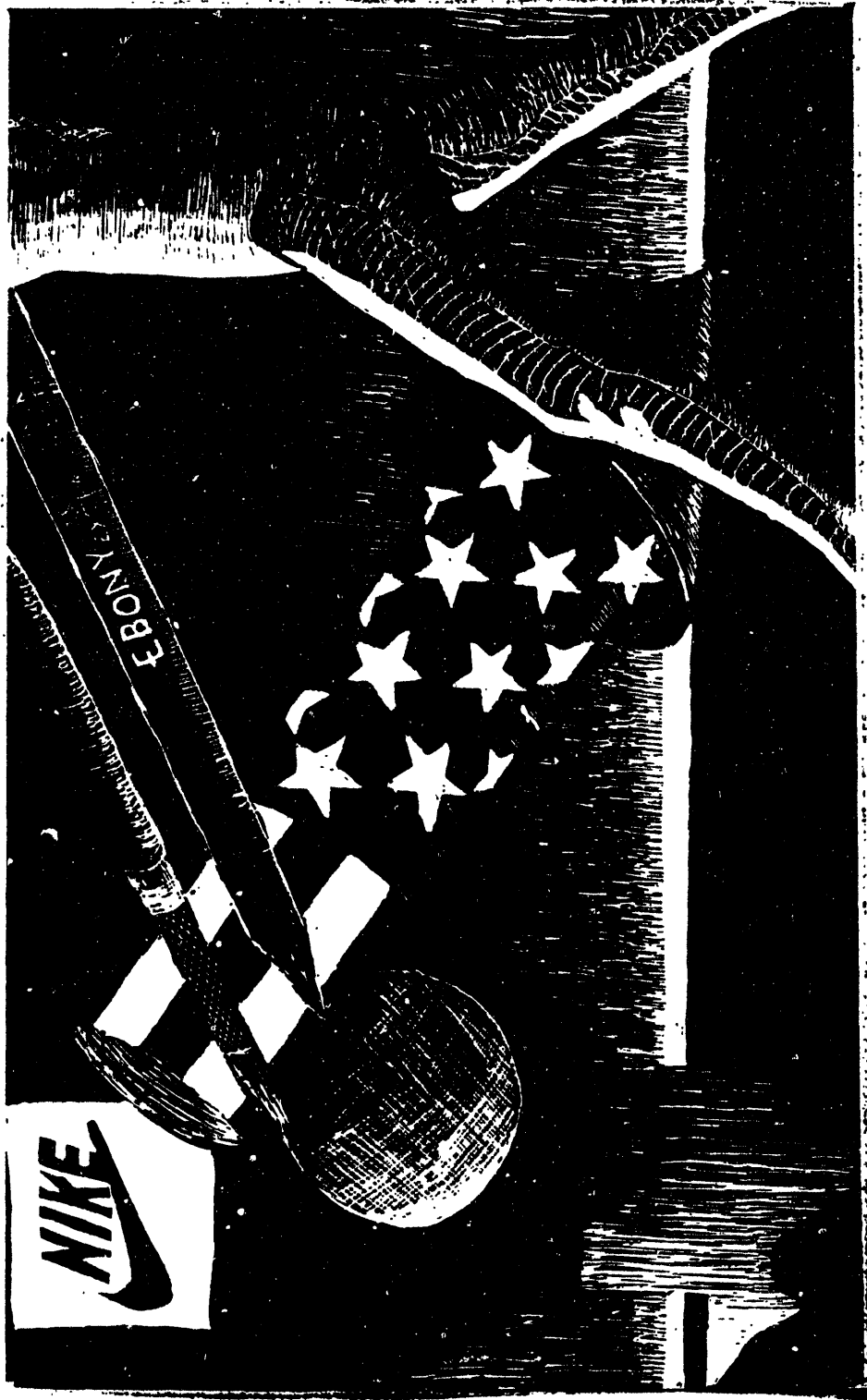
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Emergency Sections

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 20 days. The emergency action is renewable once for no more than 60 days.

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

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 60. Texas Commission of Licensing and Regulation

Subchapter A. Authority

• 16 TAC §60.1

The Texas Department of Licensing and Regulation adopts on an emergency basis new §60.1, concerning the authority of the commission to continue the operations of the Texas Department of Labor and Standards under the new name of Texas Department of Licensing and Regulation.

The new section is adopted on an emergency basis to carry on the functions of the renamed Texas Department of Labor and Standards.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 9100, §2, which provide that the department is governed by the Texas Commission of Licensing and Regulation and the commissioner of licensing and regulation.

§60.1. Authority. The Texas Commission of Licensing and Regulation, created by the enactment of Texas Civil Statutes, Article 9100, is charged with implementing, administering, and enforcing the Act relating to the continuation of the Texas Department of Labor and Standards under the new name, the Texas Department of Licensing and Regulation.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910711

Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Effective date: November 7, 1989

Expiration date: January 6, 1990

For further information, please call: (512) 463-3127

◆ ◆ ◆ Subchapter B. Organization of the Commission of Licensing and Regulation

• 16 TAC §§60.21-60.26

The Texas Department of Licensing and Regulation adopts on an emergency basis new

§§60.21-60.26, concerning the organizational structure of the commission which outlines the duties and responsibilities of the commission, the commissioner, and the department.

The new sections are proposed on an emergency basis to enforce, regulate, and administer the programs of the department.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 9100, §12 and §13, which empower and assign duties to both the commission and the commissioner.

§60.21. General Provisions.

(a) The commission, along with its executive director (the statutory commissioner), is to govern the Texas Department of Licensing and Regulation, which is the primary state agency responsible for oversight of businesses, industries, general trades, and occupations regulated by the state as each entity is assigned to the department by the legislature.

(b) It is the intent of the commission that the rules of the commission be interpreted in the best interests of the public and the state.

(c) Through these sections, the commission intends to establish procedures with which to receive public interest information and complaints from the general public and the regulated entities, assure that access to agency programs is made available to all citizens, set the fees charged the entities being regulated, and establish practice and procedures for administering the programs.

(d) The commission and the department are subject to the Texas Sunset Act, the Open Meetings Act, the Open Records Act, and the Administrative Procedure and Texas Register Act.

§60.22. Offices.

(a) The Headquarters Office of the commission is located in the E.O. Thompson Building, 920 Colorado, Austin, Texas 78711. The telephone number is (512) 463-3173. Office hours are 8 a.m. to 5 p.m., Monday-Friday.

(b) Regional and field offices for the department are established at the following locations:

(1) 400 South Collins, Suite 100, Arlington, Texas 76010;

(2) 3800 Pluxy Square, Suite 420, Tyler, Texas 75703;

(3) 321 Center Street, Room 4005, San Antonio, Texas 78202;

(4) 4410 Dillon Lane, Suite 3, Corpus Christi, Texas 78415;

(5) 1314-B South Closser, Edinburg, Texas 78539;

(6) 1220 Broadway, Suite 608, Lubbock, Texas 79401;

(7) 661 Mesa Hills, Suite 104, El Paso, Texas 79912; and

(8) 2727 Kirby Drive, Suite 301, Houston, Texas 77098.

§60.23. Commission Members.

(a) The commission shall elect one of its members to serve as chairman for a two-year term.

(b) The chairman has a vote on all matters before the commission.

(c) The procedure and grounds for removal of a member from the commission are as set forth in Texas Civil Statutes, Article 9100, §9.

(d) A commission member may not receive compensation, but is entitled to reimbursement for actual and necessary expenses incurred in performing his or her duties, subject to any applicable limitation on reimbursement provided by the General Appropriations Act.

(e) Qualification for membership on the commission are set forth in Texas Civil Statutes, Article 9100, §5 and §6, and the terms of office and method for fulfilling any vacancy are set forth in §7.

§60.24. Meetings.

(a) The commission members shall appoint an executive director for the department whose statutory title is the commissioner of licensing and regulation, however, the person appointed shall have and use the title of executive director in performing duties as assigned by the commission or specified by law.

(b) The commission shall meet at least quarterly and at such other times as needed at the call of the chairman or when called by a majority of the members.

(c) Meetings will be conducted under Robert's Rules of Order (revised 1981).

(d) When a quorum, that is a majority of the members, is present, a motion before the commission is carried by an affirmative vote of the majority of the commissioners.

(e) Meetings will be conducted as public meetings under the Open Meetings Act, however, the commission will determine on a case by case basis, the number of and the location of cameras and recording devices in order to maintain order during commission meetings. The determination of the commission will be based on, but not limited to, the following factors:

(1) the size of the facilities/room available for the meeting;

(2) the number of citizens seeking to participate, appear before, or obtain information from the commission;

(3) the number of staff personnel deemed necessary by the commission and required to be in attendance at the meeting; and

(4) compliance with fire, safety, and health codes.

(f) The public will be provided with a reasonable opportunity to appear before the commission and to speak on any issue under the jurisdiction of the commission.

§60.25. General Powers and Duties of Commission.

(a) The commission shall formulate the policy objectives for the department and shall supervise the executive director's administration of the department.

(b) The commission shall determine the amount of the department's requests for legislative appropriations, and approve the operating budget.

(c) Licenses, registrations, certificates, and permits issued by the department shall be allowed to expire or be renewed on various dates, not necessarily their anniversary date, to prevent overloading the department's systems by having all licenses expire on a single given date.

(d) Licenses, registrations, certificates, and permits may also be issued for periods that exceed 12 months.

(e) Licensees, registrants, certificate, and permit holders will be notified at least 30 days in advance of impending expiration of the license, registration, certificate, or permit.

(f) The reasonable and necessary fees, authorized by Texas Civil Statutes, Article 9100, to cover the costs of administering the programs and activities of the department, are set as outlined in Subchapter C of this chapter (relating to Fees). The fees are based on a cost management procedure which aids in determining

with reasonable accuracy the cost to the department of each program and activity.

(g) Citizens who do not speak English or who have a physical, mental, or developmental disability will be provided reasonable access to the commission itself and to the commission's programs in that:

(1) all commission and departmental facilities are in compliance with Texas Civil Statutes, Article 601b, §7, concerning architectural barriers and the policy of the State of Texas to encourage and promote the rehabilitation of handicapped or disabled citizens;

(2) special testing, whether oral, in sign language, or in a foreign language will be arranged by the department, where an examination is required for licensure; and

(3) special hearings before a hearing examiner will be arranged as needed if a question of fitness for a particular license, registration, certification, or permit should arise;

(4) citizen complaints against a person or entity regulated by the department are accepted in all forms, under all circumstances, and the department will send an interpreter along with the investigator should a language problem arise;

(5) the commission welcomes citizen input and communications at commission meetings and upon prior reasonable notice to the commission, and the department will provide interpreters and/or sign language specialists to assist the citizens in presenting their input to the commission.

(h) Consumer and service recipients will be notified of the name, mailing address, and telephone number of the department for purposes of directing complaints to the department. The notification shall be included on either:

(1) the written contract for services of an individual or entity regulated by the department;

(2) a sign prominently displayed in the place of business of each individual or entity regulated by the department if the consumer or service recipients must visit the place of business for said service; or

(3) on a bill for service provided by an individual or entity regulated by the department. If a bill for service or a written contract for service is used, the licensee may use a sticker or rubber stamp to convey the required information.

(i) In a proper contested case, administrative penalties will be assessed against the Respondent(s) and formal orders will be issued by the commission as outlined in Texas Civil Statutes, Article 9100, §17.

§60.26. Duties Assigned to the Executive Director.

(a) The executive director shall serve for a one-year term which expires on March 1 annually. The executive director is eligible for reappointment by the commission.

(b) The executive director is responsible for enforcement of all programs of the department and for general administration of the department.

(c) All licenses, registrations, certificates, and permits authorized by the programs shall be issued by the executive director on forms prescribed by the executive director.

(d) The executive director may prorate the fees set by the commission for the initial issuance of a license, registration, certificate, or permit under the §60.25(c) and (d) of this title (relating to General Powers and Duties of Commission) so that a person regulated by the department pays only that portion of the applicable fee that is allocable to the number of months during which the license, registration, certificate, or permit is valid.

(e) The executive director will file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the commission during the preceding fiscal year.

(f) The executive director is empowered to adopt rules as necessary to implement Texas Civil Statutes, Article 9100, and other laws establishing programs regulated by the department. Rules adopted by the executive director are subject to the Administrative Procedure and Texas Register Act.

(g) The executive director shall employ persons to perform the work of the department and may prescribe their duties and compensation, subject to commission approval of the budget and in accordance with personnel policies adopted by the commission. Subject to those policies, the executive director may remove any employee.

(h) The executive director or his designee shall develop an interagency career ladder program. The program may not in any manner penalize, or otherwise adversely affect, an employee who chooses not to move from one office location to another.

(i) The executive director or his designee shall develop a system of annual performance evaluations and all merit pay raises must be based on this system.

(j) The executive director or his designee shall prepare and maintain a program of equal employment opportunity under which all personnel transactions are made without regard to race, color, handicap, sex, religion, age, or national origin. The policy statement must include the enumerated items set forth in Texas Civil Stat-

utes, Article 9100, §15(d), and be updated annually and filed with the governor's office.

(k) The executive director shall implement the sanctions described in and set forth in Texas Civil Statutes, Article 9100, §17, and issue orders accordingly.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910709

Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Effective date: November 7, 1989

Expiration date: January 6, 1990

For further information, please call: (512) 463-3127

Subchapter C. Fees

- 16 TAC §§60.61-60.63, 60.65-60.67, 60.69, 60.70, 60.75, 60.78-60.80

The Texas Department of Licensing and Regulation adopts on an emergency basis new §§60.61-60.63, 60.65-60.67, 60.69, 60.70, 60.75, and 60.78-60.80, concerning fees for licenses, registrations, examinations and inspections of items, entities, and individuals licensed and/or regulated by the department.

The new sections are proposed on an emergency basis to carry on the functions of the renamed Texas Department of Labor and Standards.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 9100, §12(f), which provide the Texas Commission of Licensing and Regulation with the authority to "...set, in amounts that are reasonable and necessary to the costs of administering the programs or activities, the fees for: (1) licenses, registrations, certificates, titles, and permits issued by the commissioner; (2) license, registration, certificate, title, and permit renewals and late renewals; (3) examinations; and (4) all other authorized fees for programs or activities administered by the department."

§60.61. Boxing Fees.

(a) Promoter's license fee. The promoter's license fee shall be \$500.

(b) Fees for all other licensees. Each licensee application shall be accompanied by the annual license fee as follows:

- (1) boxer—\$15;
- (2) manager—\$75;
- (3) matchmaker—\$75;
- (4) judge—\$15;
- (5) referee—\$25;
- (6) second—\$10; and
- (7) timekeeper—\$10.

§60.62. Career Counseling.

(a) The fee for an initial certificate of authority registration is \$125.

(b) The fee for initial certificate of authority registration is not refundable.

(c) The annual fee for a renewal certificate of authority is \$50.

(d) A \$25 late fee will be charged if the completed renewal certificate of authority application is not postmarked by midnight on the 30th day after the prior certificate expires.

(e) The fee of \$50 for an annual fee for renewal certificate of authority and the \$25 late fee for an annual renewal certificate of authority is not refundable.

(f) A \$25 fee will be charged for issuing a duplicate certificate.

(g) The fee of \$25 for a duplicate certificate is not refundable.

§60.63. Personnel Employment Services.

(a) The fee for an initial certificate of authority registration is \$100.

(b) The annual fee for a renewal certificate of authority is \$50.

(c) A \$25 late fee will be charged if the completed renewal certificate of authority application is not postmarked by 12 a.m. on the 30th day after the prior certificate expires.

(d) The fee charged for an initial certificate of authority registration, the annual fee for a renewal certificate of authority, or the late fee, is refundable.

§60.65. Boiler Division Fees.

(a) Certificate/inspection fees.

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

(2) Inspection by deputy inspector. The owner or user shall make payment of the appropriate fee as shown in subparagraphs (A)-(C) of this paragraph.

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

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

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

(iii) those with a heating surface greater than 100 square feet (9.29 square meters) but not greater than 500

square feet (4.65 square meters)—\$85;

(iv) those with a heating surface greater than 500 square feet (4.65 square meters) but not greater than 1,500 square feet (139.35 square meters)—\$100; and

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

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

(i) those without a manhole—\$60; and

(ii) those with a manhole—\$90.

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

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

(c) Commission fees. The fee for a new commission, exam, re-exam, and reinstatement is \$25. The fee for a renewal is \$10 and a late renewal is \$12.50.

(d) Replacement fees. The fee for a certificate only and identifying commission card only is \$10. The fee for replacing a certificate and identifying commission card is \$25.

(e) Boiler law. The fee for a copy of the boiler law, rules and regulations is \$12.

§60.66. Toughman Fees.

(a) The promoter's license fee shall be determined by the population of the city for which it is granted, as shown:

(1) 10,000 or less, the fee is \$20;

(2) 10,001 to 25,000, the fee is \$50;

(3) 25,001 to 100,000, the fee is \$100;

(4) 100,001 to 250,000, the fee is \$200;

(5) 250,001 and over, the fee is \$300.

(b) Each license application shall be accompanied by the annual license fee as follows:

- (1) toughman-contestant \$25;
- (2) judge-\$15;
- (3) referee-\$25;
- (4) second-\$10; and
- (5) timekeeper-\$10.

\$60.67. Auctioneer Fees.

(a) Original licenses. The fee for an original auctioneer license is \$100 and the fee for an associate auctioneer license is \$50. These fees are not refundable.

(b) Renewal fees. The renewal fee for an auctioneer license is \$100 and the annual fee for renewing an associate auctioneer license is \$50. A late fee of \$25 will be charged for renewal applications post-marked between 12 a.m. of the day a current license expires and 12 a.m. of the 30th day after the expiration. These fees are not refundable.

(c) Duplicate license fees. A \$25 fee will be charged for issuing a duplicate license. This fee is not refundable.

(d) Examination fees. A \$25 fee will be charged for each examination. This fee is not refundable.

\$60.69. Manufactured Housing Division Fees.

(a) There shall be a fee of \$15 for the inspection of all HUD-Code manufactured homes manufactured or assembled within the State of Texas.

(b) There shall be a fee of \$20 for the inspection of the installation of mobile homes and HUD-Code manufactured homes which shall be paid by the installer.

(c) There shall be a fee of \$16 to be paid by each manufacturer in this state for each HUD-Code manufactured home produced.

(d) There shall be a service fee of \$70 actual expenses with a maximum of \$70 per service fee. There shall also be a reimbursement of mileage and per diem incurred by department personnel.

(e) There shall be a fee of \$21 per hour for engineering services paid by the manufacturer. The manufacturer shall also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the location of the manufacturer when such travel is incidental to the engineering services performed.

(f) There shall be a fee of \$15 per hour, not to exceed \$120 per day, for conducting initial 100% inspections at manufacturer location. The manufacturer shall

also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the location of the manufacturer.

(g) There shall be a fee of \$15 per man hour not to exceed \$120 per man day for increased frequency inspection. The manufacturer shall also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the location of the manufacturer.

(h) There shall be a fee of \$10 for the issuance of Texas seals.

(i) There shall be an annual fee for a manufactured housing manufacturer's certificate of registration of \$375 for each plant location; for a manufactured housing retailer's certificate of registration of \$225 for each retailer location; for a manufactured housing rebuilder's certificate of registration of \$225 for each rebuilder location; for a manufactured housing broker's certificate of registration of \$125 for each brokerage location; for a manufactured housing installer's certificate of registration of \$125 for each installer's location; and for a manufactured housing salesperson's certificate of registration of \$50.

(j) There shall be a fee of \$40 for the issuance of a homeowner's temporary installer's registration, which shall also include the cost of the installation inspection.

(k) There shall be a fee of \$125 for the plan review and inspection of a salvaged manufactured home which has been rebuilt, to determine if the home is habitable for the issuance of a new title. The rebuilder shall also be charged for mileage and per diem incurred by department personnel traveling to and from the location of the rebuilder.

(l) There shall be a fee of \$15 per hour or a minimum fee of \$25 for the inspection of alterations made upon the structure, plumbing, heating, or electrical systems of mobile homes and HUD-Code manufactured homes. The person shall also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the place of inspection.

(m) Each attendee at the course of instruction in the law and consumer protection regulations for registration applicants shall be assessed a fee of \$110.

(n) There shall be a fee of \$100 for the inspection of a manufactured home which is to be titled for the use as a residence after previously being used for business purposes and for which a title has been surrendered. The person requesting the inspection for the use change of a manufactured home shall be charged for mileage and per diem incurred by department personnel traveling to and from the location of the manufactured home.

(o) There shall be a fee of \$100 for the inspection of a consumer's home in

accordance with a consumer complaint when requested by a manufacturer or rebuilder.

(p) Title transaction fees are as set out in paragraphs (1)-(5) of this subsection.

(1) There shall be a fee of \$1 for each title transaction.

(2) There shall be a transaction fee of \$50 for the issuance of a quick title.

(3) The \$25 fee for all title transactions is payable for any subsequent issuance or reissuance of a manufactured home document of title except for the issuance of a corrected document of title in those instances where an error was made by the department in the document of title.

(4) There shall be a fee of \$10 for any title search.

(5) There shall be a fee of \$50 for a delinquent title.

\$60.70. Industrialized Housing and Buildings Division Fees.

(a) The manufacturer's registration is \$1,000 annually.

(b) The industrialized builder's registration fee is \$500 annually.

(c) The design review agency's registration fee is \$200 annually.

(d) The third party inspection agency registration fee is \$100 per firm and \$100 per inspector, annually.

(e) The registration fee shall be paid prior to the issuance of the certificate of registration and annually thereafter.

(f) The fee for department personnel for in-plant inspections at a manufacturing facility shall be \$30 per inspector-hour and \$40 per engineer hour for all inspections, including plant certification inspections, varying interval inspections to monitor the manufacturer's compliance control program, and for increased frequency inspections. The inspector will give a statement to the manufacturer, and it must be paid to the inspector by either a company check, cashier's check, or money order at the completion of the inspection.

(g) When the department acts as a design review agency, the fee for such services is \$40 per engineer-hour. The fee shall be paid by the manufacturer for whom the services are offered prior to the approval of the designs, plans, specifications, compliance control, and installation manuals and the release of the documents to the manufacturer.

(h) The fees for the issuance of decals and insignia are as follows:

(1) modules: \$0.065 per square foot of floor area, with a minimum of \$1 for each decal; or

(2) modular component: \$0.015 per square foot of surface area or \$0.065 per square foot of floor area, whichever is less, but with a minimum of \$0.50 for each insignia.

(i) The fee for department personnel for on-site inspections is as follows and shall be submitted with the on-site inspection request by either a company check reflecting the name of the industrialized builder, cashier's check, or money order.

(1) \$150 for residential structures designed for one to four families, plus \$25 for each dwelling unit in excess of two; or

(2) \$750 for those residential structures which exceed two stories in height or which are designed for separate living use of more than four families, plus \$25 for each additional family dwelling unit in excess of four; or

(3) \$150 for commercial structures up to 800 square feet of floor space, plus \$0.10 per additional square foot over 800; and

(4) \$60 for each reinspection not to exceed two inspector hours and \$30 for each additional inspector hour in excess of two hours. Reinspection fees will be paid to the inspector by either a company check reflecting the name of the industrialized builder, cashier's check, or a money order at the completion of the inspection.

(j) The fee for department monitoring of design review agencies and third party inspection agencies outside headquarters shall be \$25 per inspector-hour and \$35 per engineer hour; the department will present the agency a statement at the conclusion of the monitoring trip, and it is payable upon receipt.

(k) The fee for department personnel for inspection of approved alterations to industrialized housing and buildings and for special inspections shall be \$30 per inspector-hour and \$40 per engineer-hour. The department will present a billing statement at the conclusion of the inspection that is payable upon receipt.

\$60.75. Air Conditioning and Refrigeration Fees. All fees should be paid by cashier's check or money order made payable to the Texas Department of Labor and Standards.

(1) Exam costs. Class A and Class B exam fees are: one exam—\$100 (either for environmental air conditioning or commercial refrigeration and process cooling and heating); two exams \$150 (taken during the same examination period); re-exam \$50; re-schedule \$50.

(2) License fees. Class A license for three years \$300; renewal every three years \$150; Class B license for three years \$150; renewal every three years \$75; late renewal fee \$50.

(3) Lost or revised license. A \$25 fee shall be required and accompany each request for a revised license or to replace a lost or duplicate license.

(4) Lost or revised wallet card. A \$10 fee shall be required and accompany each request for a revised or lost wallet card.

(5) Addition of an endorsement to an existing license. A reprint of license and wallet card shall be \$25. If the license is to be reprinted for renewal or revision at the same time, for which required fees are paid, and the request is received before the license has been reprinted, this fee may be waived.

\$60.78. Talent Agency Fees.

(a) The fee for an original talent agency certificate of registration is \$100. This fee is not refundable.

(b) The annual renewal fee for a talent agency certificate of registration is \$50. This fee is not refundable.

(c) A late fee of \$25 will be charged for renewal applications post-marked between 12 a.m. of the day the current certificate of registration expires and midnight of the 30th day after the expiration. This fee is not refundable.

\$60.79. Vehicle Storage Facility.

(a) The fee for an original license to operate a vehicle storage facility is \$100. This fee is not refundable.

(b) The annual renewal fee for a license to operate a vehicle storage facility is \$75. This fee is not refundable.

(c) A late fee of \$25 will be charged for renewal applications post-marked between midnight December 31 and midnight January 31. This fee is not refundable.

(d) A \$25 fee will be charged for issuing duplicate license. This fee is not refundable.

\$60.80. Tow Truck Fees.

(a) The annual fee for an original certificate of registration is \$125 for each truck. This fee is not refundable.

(b) The annual fee for a renewal certificate of registration is \$50 for each truck. This fee is not refundable.

(c) A late fee of \$25 will be charged if the completed renewal certificate of registration application is not postmarked by midnight, January 31 of each year. This fee is not refundable.

(d) A \$25 fee will be charged for issuance of a duplicate certificate of registration. This fee is not refundable.

Issued in Austin, Texas, on November 7, 1989.

TRD-8910707

Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Effective date: November 7, 1989

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For further information, please call: (512) 463-3127

◆ ◆ ◆ Subchapter D. Practice and Procedures

◆ ◆ ◆
• 16 TAC §§60.100-60.109, 60.120-60.124, 60.150-60.159, 60.170-60.177, 60.190-60.195

The Texas Department of Licensing and Regulation adopts on an emergency basis new §§60.100-60.109, 60.120-60.124, 60.150-60.159, 60.170-60.177, and 60.190-60.195.

The new sections are adopted on an emergency basis to allow the department to facilitate the administration of the laws of the state within its jurisdiction.

The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 9100, §17, which require the commissioner of licensing and regulation to adopt rules prescribing procedures for suspensions or revocations, or assessments of administrative penalties.

\$60.100. Purpose and Scope.

(a) The purpose of these sections is to provide an orderly and efficient system of procedure before the Texas Department of Licensing and Regulation, thereby facilitating the administration of the laws of the state within its jurisdiction. These sections shall be given a liberal construction to attain this objective.

(b) These sections shall govern the procedure for the institution, conduct, and determination of all causes and proceedings before the Texas Department of Licensing and Regulation where notice and hearing is required. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

(c) The basic procedural requirements for hearings before the department are as set forth in Texas Civil Statutes, Article 91.00, §17 and in the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a.

\$60.101. Definitions. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

Applicant—Any person seeking a license, certificate of authority, or registration from the department.

APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Commission—The Texas Commission of Licensing and Regulation.

Commissioner—The commissioner of the Texas Department of Licensing and Regulation.

Complainant—Any person who has filed a complaint with the department against any person whose activities are subject to the jurisdiction of the department.

Contested case or proceeding—A proceeding in which the legal rights, duties, or privileges of a party are to be determined by the department after an opportunity for adjudicative hearing.

Department—The Texas Department of Licensing and Regulation.

Hearing examiner or examiner—A person appointed by the commissioner to conduct hearings in contested cases.

Justiciable interest—A right, an entitlement, or legal share capable of being decided by legal principles.

License—The whole or part of any departmental registration, license, commission, certificate of authority, approval, permit, endorsement, or similar form of permission required or permitted by law.

Party—The department or a person who has appeared in a contested case or has filed timely notice of interest to appear, and who has not been dismissed or excluded by the hearing examiner.

Person—Any individual, partnership, corporation, or other legal entity, including a state agency or governmental subdivision.

Pleading—A written petition, answer, motion, or other written instrument filed with the department in a contested case.

Register—The *Texas Register*, as established by APTRA.

Respondent—A person against whom any complaint has been filed.

Rule—Any departmental statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the department and is filed with the Register.

T.R.C.P.—Texas Rules of Civil Procedure.

Uncontested proceeding or case—All proceedings other than contested proceedings.

U.S.P.S.—United States Postal Service.

§60.102. Filing, Computation of Time, and Notice.

(a) All documents relating to any proceeding pending or to be instituted before the department, shall be mailed by U.S.P.S. mail to Office of the Commissioner, P.O. Box 12157, Austin, Texas 78711 or by personal delivery to the Office of the Commissioner, Ernest O. Thompson state Office Building, 920 Colorado Street, 11th Floor, Austin. These pleadings and other documents shall be deemed filed only

When actually received by the office of the commissioner.

(b) In computing any period of time prescribed or allowed by these sections, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal state holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal state holiday.

(c) A notice of hearing, order, or other document related to a contested case which is mailed to a party or his representative is prima facie evidence of receipt if it is mailed to the complete, correct address of record. This presumption is rebuttable. Failure to claim properly addressed certified or registered mail will not support a finding of nondelivery, delayed delivery, or misdelivery.

(d) The date for computing or determining when a time period begins to run, concerning pleadings or other documents mailed by the department, shall be the date of the postmark. If the department uses a common carrier or commercial delivery service, the date delivered to the common carrier or commercial delivery service controls.

§60.103. Agreements to be in Writing. No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any contested case shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing or incorporating their written approval.

§60.104. Hearing Examiner.

(a) Every hearing before the department shall be conducted by a hearing examiner. The hearing examiner shall have the authority to do the following:

- (1) reset hearing dates;
- (2) order pre-hearing conferences;
- (3) convene hearings;
- (4) establish the jurisdiction of the department;
- (5) rule on pleadings;
- (6) admit and classify parties, and establish the order for presentation of evidence;
- (7) administer oaths;
- (8) rule on the admissibility of evidence;
- (9) examine witnesses;
- (10) issue subpoenas to compel the attendance of witnesses, or the produc-

tion of papers and documents relating to the hearing;

(11) commission and require the taking of depositions for good cause;

(12) conduct hearings in an orderly manner in accordance with the statutes and the applicable substantive departmental rules being enforced;

(13) recess hearings from time to time and from place to place;

(14) make proposed findings of fact and conclusions of law; and

(15) any and all other things necessary to provide a fair, just, and proper hearing.

(b) If for any reason a hearing examiner cannot continue on a contested case, another hearing examiner shall be appointed by the commissioner. The succeeding hearing examiner shall become familiar with the record and perform any functions remaining to be performed without the necessity of repeating any previous proceedings in the case.

§60.105. Conduct and Decorum.

(a) Every party, witness, attorney, or other representative shall conduct himself in all proceedings with dignity, courtesy, and respect for the department, the hearing examiner, and all other parties and participants. Attorneys shall observe and practice the standards of ethical behavior prescribed for the profession by the "Code of Professional Responsibility" and "Canons of Judicial Ethics" or, after January 1, 1990, the "Texas Disciplinary Rules of Professional Conduct."

(b) Upon violation of subsection (a) of this section, any party, witness, attorney, or other representative may be excluded by the hearing examiner from any hearing for such period and upon such conditions as are just, and may be subject to such other just, reasonable, and lawful disciplinary section as the commission may prescribe.

§60.106. Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, neither the hearing examiner, the commission, or the commissioner may communicate, directly or indirectly, in connection with any issue of fact or law in a contested case with any party to that case or his representative, except on notice and opportunity for all parties to participate. The hearing examiner, the commission, and the commissioner, may communicate ex parte with other members of the department who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the department's staff in evaluating the evidence.

§60.107. Parties.

(a) All parties must have a justifiable interest in the proceedings in order to be designated as parties. All appearances are subject to a motion to strike upon a showing that the person has no justiciable interest in the proceedings.

(b) Regardless of errors as to designations in their pleadings, parties shall be treated by the hearing examiner according to their true status in the proceeding.

§60.108. Representative Appearances. Any person may appear in any proceeding pro se or by authorized representative.

§60.109. Form and Content of Pleadings.

(a) Pleadings and briefs shall be typewritten or printed on paper not to exceed 8 1/2 inches by 11 inches with an inside margin at least one inch wide and annexed exhibits folded to the same size. Text shall be on one side of the paper only and shall be double-spaced, except that footnotes and quotations in excess of two lines shall be single-spaced. Reproductions may be by any process, provided all copies are clear and permanently legible.

(b) All pleadings shall contain the following:

(1) the name, address, and phone number of the party filing the pleading, or of his representative; if the representative is a member of the Texas Bar, he shall include his state bar number;

(2) a concise statement of the facts relied upon;

(3) a prayer stating the type of relief, action, or order desired;

(4) the signature of the party or his representative;

(5) any other matter required by statute;

(6) a certificate of service on all pleadings other than the initial complaint.

§60.120. Motions. All motions, except those made during a hearing, shall be considered to be pleadings and shall follow the rules set forth herein as relating to pleadings. If based upon matters which do not appear in the record, the motion shall be supported by affidavits and/or certified copies of documents. Any motion made after the hearing examiner has filed a proposal for decision shall be filed with the hearing examiner, who shall act upon the motion at the earliest practicable time.

§60.121. Service of Pleadings. Except with respect to the initial complaint, a copy of all pleadings filed by any party in any proceeding shall be mailed or delivered by the party filing it to every other party of

record. The Texas Rules of Civil Procedure, Rule 72, controls in multiple party cases and copies may be delivered to the hearing examiner. If any party is being represented by an attorney or other representative authorized under these sections to make appearances, service shall be made upon that attorney or representative. The willful failure of any party to make this service may be grounds for the entry of an order striking the pleading from the record.

§60.122. Examination and Correction of Pleadings. Any pleading which does not comply substantially with applicable statutes and these sections is subject to being stricken upon motion of a party or upon the hearing examiner's own motion. The party filing the pleading shall have the right to file a corrected pleading, provided that the filing of the corrected pleading shall not be permitted to delay any hearing unless the party seeking to file the corrected pleadings establishes that the delay is necessary in order to prevent injustice or to protect the public interest and welfare.

§60.123. Amended Pleadings. Any pleading may be amended at any time, provided that it does not act as a surprise to the opposite party. Any amended pleading which operates as a surprise to the opposite party, upon written motion, may be granted upon a showing that no undue harm will result.

§60.124. Prepared Testimony and Exhibits. The hearing examiner may require and designate the date that prepared testimony and exhibits be filed and served on all other parties of record prior to the day set for hearing.

§60.150. Notice and Service. The department shall send written notice to all parties of a contested case as provided for in the Administrative Procedure and Texas Register Act, §13.

§60.151. Dismissal Without Hearing. The hearing examiner may entertain motions for dismissal without a hearing for any of the following reasons:

- (1) failure to prosecute;
- (2) unnecessary duplication of proceedings, or res adjudicata, collateral estoppel, or estoppel by judgment;
- (3) withdrawal;
- (4) moot questions or obsolete petitions;
- (5) lack of jurisdiction; or
- (6) any other reason which bars the proceeding.

§60.152. Disposition by Agreement.

(a) Disposition by agreement of any contested case may be made by stipulation,

agreed settlement, or consent order, unless precluded by law.

(b) Parties agreeing to such informal disposition shall prepare a proposal for decision, containing proposed findings of fact and conclusions of law, which shall be signed by all the parties and their designated representatives. The proposal for decision shall be filed with the hearing examiner.

(c) The hearing examiner shall promptly make his recommendation to the commissioner and/or the commission on the proposal for decision.

(d) Upon receipt of the proposal for decision and the hearing examiner's recommendation, the commissioner and/or the commission may:

(1) adopt the proposal as the final order;

(2) reject the proposal and remand the contested case for a hearing before the hearing examiner;

(3) reject the proposal and order a further investigation by the department; or

(4) take such other action as the commissioner and/or the commission find just.

§60.153. Prehearing Conference.

(a) The hearing examiner, upon his own motion or upon motion by any party, may direct the parties or their designated representative to appear at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering any of the following:

(1) the simplification of issues;

(2) the possibility of making admissions of certain allegations of fact or stipulations concerning the use by any of the parties of matters of public record, such as annual reports and the like, in order to avoid the unnecessary introduction of proof;

(3) the procedure at a hearing;

(4) the limitation, where possible, of the number of witnesses;

(5) any other matters which may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of issues in dispute.

(b) Action taken at the conference shall be recorded by the hearing examiner, unless the parties enter into a written agreement as to such matters as permitted in §60.103 of this title (relating to Agreements in Writing).

§60.154. Postponement, Continuance, Withdrawal, or Dismissal.

(a) Motions for postponement, continuance, withdrawal, or dismissal of any

contested case which has been set for hearing shall be served on all parties not less than five days prior to the hearing date.

(b) Those motions shall make reference to all prior motions of the same nature filed in the same proceedings.

(c) Failure to comply with the requirements of this section, except for good cause shown, shall be sufficient grounds for the hearing examiner to deny that motion.

(d) After the commencement of a hearing, the hearing examiner shall not grant a postponement in or continuance of the hearing without the consent of all parties unless the hearing examiner finds that a failure to grant the requested postponement or continuance would be unjust, inequitable, or not in the public interest.

(e) The hearing examiner may entertain motions for dismissal of a proceeding during a hearing for the same reasons set forth in §60.151 of this title relating to (Dismissal Without Hearing).

§60.155. 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 shall not be consolidated without the consent of all of the parties, unless the hearing examiner finds that the two or more proceedings involve common questions of law or fact, and shall further find that separate hearings would result in unwarranted expense, delay, or substantial injustice.

§60.156. Discovery. All matters regarding discovery shall be governed by the Administrative Procedure and Texas Register Act, §14 and §14a, and the Texas Rules of Civil Procedure, Rules 166b, 167, 168, 169, and 215.

§60.157. Place and Nature of Hearings. All hearings conducted in any proceeding covered by this chapter shall be open to the public. All hearings shall be held in Austin, unless for good cause the commissioner designates another place within the state.

§60.158. Order of Procedure.

(a) The hearing examiner shall open the hearing and make a concise statement of its scope and purposes.

(b) once the hearing has begun, parties or their representatives may be off the record only when the hearing examiner permits. If a discussion off the record is pertinent, the hearing examiner will summarize such discussion for the record.

(c) Appearances are to be entered on the record by all parties, their attorneys, or representatives. Thereafter, parties may make motions or opening statements.

(d) All persons who may testify will be placed under oath and "the rule" may be invoked by any party. If the rule is invoked against the department's witnesses or those of a corporation, general partnership, or limited partnership, such party shall designate one witness to remain with its attorneys in the hearing as a non-attorney representative of the party.

(e) Following the opening statements of all parties, the party with the burden shall be allowed to proceed with its direct case, after which opposing parties shall be allowed cross-examination. All other parties will then present their cases and their witnesses shall be subject to cross-examination.

(f) After all parties have completed the presentation of their evidence, and have been afforded the opportunity to cross-examine the opposition witnesses, closing statements shall be allowed. The party with the burden of proof shall be entitled to open and close.

(g) The hearing examiner may also call upon any party or the staff of the department for further material or relevant evidence upon and issue before the issuance of a report and proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection and rebuttal by all parties.

§60.159. Briefs.

(a) Briefs shall conform, where practicable, to the requirements for form of pleadings set out in these sections. The Points involved shall be concisely stated, the evidence in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner.

(b) Briefs may be requested by the hearing examiner at any time, on any question.

§60.170. Reporters and Transcripts.

(a) In all proceedings for which any party or the staff requests a reporter, an official reporter shall make and transcribe a stenographic record of the hearing and the reporter shall provide as many copies of the transcript as may be required for the purposes of the department. In all other proceedings, a tape recording shall be made. No copies of the transcript will be furnished to the parties by the department, but copies may be purchased from the department upon payment of appropriate charges. If no reporter was requested prior to a proceeding but a transcript is requested after the proceeding has closed, the department may assess costs to any party requesting that a transcript be made from the tape of the proceeding.

(b) Errors claimed to be in a transcription of a hearing shall be noted in

Writing and suggested corrections may be offered within 10 days after the transcript is filed with the hearing examiner, unless the hearing examiner shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the hearing examiner. If not objected to by opposing party within 12 days after being offered, the hearing examiner will direct the suggested corrections be made and the manner of making. In the event that parties disagree on suggested corrections, the hearing examiner, with the aid of argument and testimony from the parties, shall then determine the manner in which the record shall be changed, if at all.

§60.171. The Record. The content of the record in a contested case is set forth in the Administrative Procedure and Texas Register Act, §13(f).

§60.172. Rules of Evidence. The rules of evidence in hearings conducted under this chapter are those set forth in the Administrative Procedure and Texas Register Act, §14. All questions or issues regarding or relating to the admission or exclusion of evidence shall be decided with reference to that section.

§60.173. Official Notice. official notice of facts may be taken as provided in the Administrative Procedure and Texas Register Act, §14(q).

§60.174. Documentary Evidence.

(a) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, however, parties shall be given an opportunity to compare the copy with the original.

(b) When a large number of similar documents are offered, the hearing examiner may limit those admitted to a number which are typical and representative, and may, in his discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; however, before making this requirement, the hearing examiner shall see that all parties of record or their representatives are given an opportunity to examine the documents from which the abstracts are to be made.

§60.175. Admissibility of Prepared Testimony and Exhibits. Any part of the evidence may be received in written form. affidavits may be allowed when, in the hearing examiner's opinion, they are necessary to ascertain facts not reasonably susceptible to proof otherwise and are of a type commonly relied upon by prudent men in the conduct of their affairs. Evidence may be received by telephone or other electronic transmission.

§60.176. Introduction of Exhibits.

(a) Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of the commission, and whenever practicable shall conform to the requirements of §60.109 of this title (relating to Form and Content of Pleadings). Exhibits shall be limited to facts which are material and relevant to the issues involved in the proceeding.

(b) The original of each exhibit offered shall be tendered to the hearing examiner for identification. One copy shall be furnished to the hearing examiner, and one copy to each party of record or his representative. Written or printed documents and maps received in evidence may not be withdrawn except with the approval of the hearing examiner.

(c) In the event an exhibit has been identified, objected to, and excluded, the hearing examiner shall determine whether or not the party offering the exhibit has withdrawn the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the hearing examiner with his ruling, and shall be included in the record for the purpose only of preserving the exception.

(d) The hearing examiner may keep the record open or re-open it to receive late exhibits.

§60.177. Offer of Proof. Where testimony on direct examination is excluded by a ruling of the hearing examiner, the party offering the excluded evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the commission and/or commissioner. 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 an objection to questions asked on cross examination may be preserved without making an offer of proof.

§60.190. Witnesses Limited. The hearing examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§60.191. Proposals for Decision.

(a) After closing the hearing for receipt of evidence, the hearing examiner shall prepare a written proposal for decision of the hearing for the commissioner and/or commission. The proposal for decision shall contain a summary of the evidence, findings of fact and conclusions of law, a proposed

decision, and the reasons for his proposed decision and each finding and conclusion. A copy of the proposal for decision shall be served by the hearing examiner on each party. The hearing examiner's proposal for decision may be amended in response to exceptions or briefs submitted by the parties or their representatives without again being served on the parties.

(b) Proposed decisions shall be brought before the commissioner or the commission for decision under their respective authorities.

§60.192. Filing of Exceptions and Replies. Any party may file exceptions to the hearing examiner's proposal for decision within 14 days after the date of service of the proposal for decision. Replies to those exceptions may be filed by any other party within 14 days after the date the exceptions are filed. A request for an extension of time for filing exceptions or replies shall be filed with the hearing examiner, and a copy of the request shall be served on all other parties of record by the party making the request. The hearing examiner shall allow additional time only in extraordinary circumstances as required by the interests of justice. The hearing examiner shall promptly notify all the parties of his action upon the request for extension of time.

§60.193. Form of Exceptions and Replies. Exceptions and replies to a proposal for decision shall conform as nearly as possible to the requirements of this chapter for pleadings. The specific exceptions shall be concisely stated. The evidence relied upon shall be pointed out with particularity, and that evidence and the argument shall be grouped under the exceptions to which they relate.

§60.194. Final Orders, Motions for Rehearing, and Emergency Orders.

(a) In ordering an administrative sanction, the commissioner may:

- (1) issue a written reprimand to the person that specifies the violation;
- (2) revoke or suspend the person's license, registration, certificate, or permit;
- (3) place on probation a person whose license, registration, certificate, or permit has been suspended;
- (4) if the suspension of a license registration, certificate, or permit is probated, require the person to:

(A) report regularly to the commissioner on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the commissioner; or

(C) continue or renew professional education until the person attains a degree of skill satisfactory to the commissioner in those areas that are the basis for the probation.

(b) In ordering an administrative penalty the commission shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(c) The commissioner shall give notice of his and/or the commission's order to all parties. The notice must include:

- (1) separate statements of the findings of fact and conclusions of law;
- (2) the amount of any penalty assessed, if any;
- (3) whether or not a motion for rehearing is required as a prerequisite for appeal;
- (4) the motion for rehearing time table (see subsection (d) of this section)

(d) Except where there is a finding of imminent peril requiring immediate effect of the order and a statement that no motion for rehearing is necessary, a motion for rehearing is a prerequisite for appeal. A motion for rehearing must be filed by a party within 20 days after the date a party is notified of rendition of a final order. Replies to a motion for rehearing must be filed within 30 days after the date a party is notified of rendition of the final decision or order, and action on the motion must be taken within 45 days after the date a party is notified of rendition of the final order. If action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date a party is notified of rendition of the final order. The commissioner and/or commission may by written order extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for action beyond 90 days after the date a party is notified of rendition of the final order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date a party is notified of the rendition of the final order.

(e) An order is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion

for rehearing and is final and appealable on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

(f) If an administrative penalty is included in the order, the person charged shall, no later than the 30th day after the date the order is final and appealable:

- (1) pay the penalty in full; or
- (2) if the person files a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both the fact of the violation and the amount of the penalty;

(A) forward the amount assessed to the department for deposit in an escrow account; or

(B) in lieu of payment into escrow, post with the department a supersedeas bond for the amount of the penalty, in a form approved by the commissioner and effective until judicial review of the decision is final.

(g) A person charged with a penalty who is financially unable to comply with paragraph (2) of this subsection is entitled to judicial review if the person files with the court, as part of the person's petition for judicial review, a sworn statement that the person is unable to meet the requirements of this subsection.

(h) Except as provided by subsection (g) of this section, failure to forward the amount assessed or post the bond with the department in the manner and within the period prescribed by these rules results in a waiver of legal rights to judicial review. If the person charged fails to timely forward the amount assessed or post the bond, the department or the attorney general may bring an action for the collection of the penalty.

(i) Judicial review of an order of the commissioner or of the commission is subject to the substantial evidence rule and shall be instituted by filing a petition with Travis County District Court, as provided by the Administrative Procedure and Texas Register Act (APTRA), §19.

(j) A petition for judicial review must be filed in a district court of Travis County within 30 days after the order is final and appealable, as provided by APTRA, §19.

§60.195. Remittur of Administrative Penalty. If, after judicial review, the administrative penalty is reduced or not assessed, the commissioner shall remit to the person charged the appropriate amount, plus accrued interest if the penalty has been paid, or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amount remitted by the commissioner shall be paid at a rate equal

to the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and shall be paid for the period beginning on the date that the assessed penalty was paid to the commissioner and ending on the date the penalty is remitted.

Issued in Austin, Texas on November 7, 1989.

TRD-8910705

Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Effective date: November 7, 1989

Expiration date: January 6, 1990

For further information, please call: (512) 463-3127

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 145. Long Term Care

Subchapter N. Minimum Licensing Standards for Facilities Serving the Mentally Retarded Citizens of Texas.

• 25 TAC §145.213

The Texas Department of Health adopts on an emergency basis new §145.213, concerning an informal administrative review process for facilities for the mentally retarded. The new section provides that the facilities will have the opportunity for a review of the findings of department survey teams prior to the findings becoming final. The section covers the purpose of the review; application of the review process; provider's responsibility; public health region responsibility; and department's central office responsibility.

The new section is being adopted on an emergency basis in order to implement the requirements of Senate Bill 1426, 71st Legislature, 1989. The bill requires that the Board of Health adopt by rule an informal review process for findings of department survey teams in facilities for the mentally retarded before the findings become final. Since the bill became effective on September 1, 1989, the board is adopting the new section on an emergency basis. The new section is also being proposed for permanent adoption in this issue of the *Texas Register*.

The new section is adopted on an emergency basis under the Health and Safety Code, Chapter 12, as amended by Senate Bill 1426, 71st Legislature, 1989, which provides the Board of Health with the authority by rule to adopt procedures for an informal review of department survey findings in facilities for the mentally retarded before the findings become final; Health and Safety Code, §12.001, which provides the board to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health; and Texas Civil Statutes, Article

62521-13a, §1.05 which provide the board with the authority to adopt emergency rules.

§145.213. Informal Administrative Review Process.

(a) Purpose. The purpose of this section is to ensure that providers for licensed and/or certified facilities for the mentally retarded have the opportunity to discuss the findings of their surveys or other visits made by surveyors from the Department of Health and request that deficiencies and/or certification recommendations be reviewed for validity before being finalized. A licensed and/or certified intermediate care facility for the mentally retarded (ICF-MR) includes any health care facility which the department is authorized by law or contract to regulate and survey for compliance with appropriate laws and regulations.

(b) Application.

(1) General. The procedure in this section is to be utilized by providers when there is a disagreement with surveyors' findings and/or recommendations or when additional written information becomes available that was not shared with the survey team. Informal appeals involving 23-day terminations must be resolved before the end of the fifth working day.

(2) Review process.

(A) Exit conference. An informal administrative review starts with request from the administrator of the facility at the exit conference. The request should be made to the team leader. If there are issues which are not resolved during the exit conference, the administrator may proceed to the program administrator of the public health region.

(B) Public health region conference. A conference with the program administrator will be scheduled and conducted if requested within five working days of the exit conference. Any additional information may be given to the regional program administrator within the five working day deadline.

(C) State agency central office review. If the conference at the public health region level does not resolve the issues, a request may be made to the Department's Associateship for Special Health Services, Office of Quality Assurance for an additional review and reconsideration.

(c) Provider's responsibility.

(1) At the time of the survey the provider should furnish all information upon the surveyor's request. Information needed to conduct the survey should be available during the survey; however, additional information will be accepted at the time of the exit conference. The facility

staff should not wait until the exit conference to supply information requested earlier during the survey.

(2) If the provider wants an informal administrative review, the provider must request one within five working days after the facility's exit conference.

(3) After the fifth working day the department will not accept additional information or schedule a conference at the regional or central office level for informal administrative review.

(d) Public health region responsibility. If the facility submits additional information or requests a conference with the regional office within five working days of the exit conference, the survey team in conjunction with the regional program administrator will:

(1) review additional information and make an objective decision as to whether deficiencies and/or punitive action recommendations should be changed;

(2) upon request, meet with providers to discuss survey findings;

(3) notify provider of survey team/program administrator's decision within the five working days; and

(4) forward all information received to the department's central office.

(e) Central office responsibility. Upon request by the facility or the public

health region staff, the department's association for special health services, Office of Quality Assurance will:

(1) review all information and/or hold a conference with the provider to make an impartial decision as to whether deficiencies and/or punitive action recommendations shall be sustained, altered, or revised from the original findings of the survey team;

(2) determine a resolution and present the resolution to the associate commissioner for special health services for concurrence; and

(3) will notify the provider of a decision before the seventh working day after the exit conference on a 23-day termination and before the 40th day after the exit conference on a 90-day termination. Time frames for 23-day and 90-day terminations must be adhered to by the facility and the department.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910645

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

Effective date: November 6, 1989.

Expiration date: March 6, 1990.

For further information, please call: (512) 458-7706



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

• 34 TAC §3.545

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended, §3.545, for a 60-day period effective November 8, 1989. The text of amended, §3.545 was originally published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3446).

Issued in Austin, Texas on November 6, 1989.

TRD-8910619

Wade Anderson
Rules Coordinator
Comptroller of Public
Accounts

Effective date: November 8, 1989

Expiration date: January 7, 1990

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



• 34 TAC §3.548

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended, §3.548, for a 60-day period effective November 8, 1989. The text of amended, §3.548 was originally published in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3446).

Issued in Austin, Texas, on November 6, 1989.

TRD-8910618

Wade Anderson
Rules Coordinator
Comptroller of Public
Accounts

Effective date: November 8, 1989

Expiration date: January 7, 1990

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





Proposed Sections

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

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

TITLE 10. COMMUNITY DEVELOPMENT

Part II. Texas Department of Commerce

Chapter 165. Allocation of the State's Limit on Certain Private Activity Bonds

• 10 TAC §§165.1-165.3, 165.5-165.7

The Texas Department of Commerce (Commerce) proposes amendments to §§165.1-165.3, 165.5-165.7, concerning the establishment of requirements and procedures for the submission of applications and supporting documentation for allocation reservations for the state ceiling on certain private activity bonds and the consideration of those applications by Commerce. The sections provide clarification of the information required to reserve a portion of the state's ceiling and to clarify certain approval standards.

Gary King, division director, finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government 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 benefit anticipated as a result of enforcing the sections will be the continuation of the allocation of the state authority to issue private activity bonds. The effect on small businesses as a result of enforcing the sections will be \$500 for application for reservation and application for carryforward fee. The closing fee is up to \$1,000 or 0.025% of the principal amount of the bonds certified. The cost of compliance for small businesses is the same as for the largest businesses affected by the sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Bruce Anderson, General Counsel, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711, within 30 days after the date of this publication.

The amendments are proposed under Texas Civil Statutes, Article 5190-9a, which provide Commerce with the authority to adopt rules for the administration and implementation of the allocation of the authority in the state to private activity bonds.

§165.1. General Provisions.

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

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

(1) (No change.)

(2) Additional documents—Those documents that are required to be filed by the issuer no later than 20 days after the reservation date, except for issuers of qualified mortgage bonds.]

(2) [(3)] Amount—With respect to bonds, reservation certificate, or a portion of the state ceiling, is a sum measured in terms of United States dollars.

(3) Application fee—The \$500 non-refundable application fee submitted to the department along with an application for reservation or an application for carryforward.

(4)-(7) (No change.)

(8) Bond authorization requirements—Those requirements that are to be filed by the issuer no later than 35 days after the issuer's reservation date.

(9) [(8)] Bonds—Includes all bonds, certificates, notes, and other obligations authorized to be issued by any issuer by any statute, city home-rule charter, or the Texas Constitution and which are subject to the limitations of the code, §146.

(10) [(9)] Borrower—Any person or persons whose private business use, within the meaning of the Code, would cause any bonds to constitute private activity bonds within the meaning of the Code. If there is more than one such person with respect to any issue of bonds, then the term shall mean and include each and every such person known at the time that the issuer files an application for reservation or an application for carryforward, except that any one of such persons may execute any such application, letter, or other writing which the Act and this chapter requires to be executed by the borrower.

(11) [(10)] Business day—A day on which the department is open for business. The term shall not include any Saturday, Sunday, or holiday officially observed by the state. The department's normal busi-

ness hours are 8 a.m. to 5 p.m. each business day.

(12) [(11)] Certificate of allocation—The notice given by the department to an issuer confirming the issuance of bonds receiving a portion of the state ceiling pursuant to the Act and the code.

(13) [(12)] Certificate of delivery—The notice given to the department by the issuer stating the closing date of the bonds and the amount of bonds issued and delivered at closing.

(14) [(13)] Certificate of reservation—The notice given by the department to an issuer reserving a specific amount of the state ceiling for a specific issue of bonds.

(15) [(14)] Close or closing—The issuance and delivery of bonds by an issuer in exchange for the required payment therefor, or in the case of mortgage credit certificates, the date when an issuer elects not to issue qualified mortgage bonds and establishes a mortgage credit certificate program under the code. The term does not include a delivery of bonds if the expenditure of the proceeds of bonds is conditioned on obtaining credit enhancement in support of the bonds.

(16) [(15)] Closing date—The date on which the bonds have been issued and delivered in exchange for the required payment therefor.

(17) Closing documents—Those documents that are required to be filed by the issuer not later than the fifth day after the day on which the bonds are closed.

(18) Closing fee—The non-refundable fee in the amount of \$1,000 or 0.025% of the principal amount of the bonds certified as provided by the Act, §6(a)(2), whichever is greater. The foregoing notwithstanding, an issuer exchanging a portion of the state ceiling for mortgage credit certificates shall submit to the department a closing fee in the amount of \$1,000 or 0.0125% of the amount of the state ceiling reserved, whichever is greater.

(19) [(16)] Code—The Internal Revenue Code of 1986, as the same from time to time may be amended.

(20) [(17)] Department—The Texas Department of Commerce.

(21)[(18)] Election—An election by an issuer of qualified mortgage bonds to convert its bond authority to mortgage credit certificates under applicable sections of the code.

(22)[(19)] Executive director—The executive director of the department.

(20) Fee—The \$500 non-refundable application fee submitted to the department along with an application for reservation or an application for carryforward.]

(23) Finance team members—Members associated with the specific bond issue and project or mortgage credit certificate program which include the issuer, user, bond counsel, placement agent, or underwriter, trustee, or any other members.

(24)[(21)] Governing body—The board, council, commission, commissioners' court, or legislative body of the governmental unit.

(25)[(22)] Governmental unit—A city, county, or other political subdivision which may create and utilize a corporation, or act for and on its behalf.

(26)[(23)] Housing finance corporation—A corporation created under the Texas Housing Finance Corporations Act, the Texas Local Government Code, Chapter 394.

(27)[(24)] Issued—Bonds that have actually been delivered and paid for in full. The date of issuance shall be the date on which the bonds have been delivered and paid for in full.

(28)[(25)] Issuer—Any department, board, authority, agency, subdivision, municipal corporation, political subdivision, body politic, or instrumentality of the State of Texas of every kind or type whatsoever and any non-profit corporation acting for or on behalf of any of the foregoing.

(29)[(26)] Joint housing finance corporation—A housing finance corporation acting on behalf of more than one local governmental unit as provided in the Texas Housing Finance Corporations Act, §394.012, the Texas Local Government Code, Chapter 394.

(30)[(27)] Local governmental unit—Any city or county.

(31)[(28)] Local population—The population in the local governmental unit or units on whose behalf a housing finance corporation is created as determined by the most recent federal census estimate. If two local governmental units which overlap have created housing finance corporations, prior to the submission of either the application for reservation or the application for carryforward [sale of qualified mortgage bonds] by either housing finance corporation, there shall be excluded from the

population of the larger local governmental unit that portion of the population of any smaller local governmental unit having a population as determined by the most recent federal census estimate of 20,000 or more which is within the larger local governmental unit, unless the smaller local governmental unit assigns its authority to issue qualified mortgage bonds, based upon its population, to the larger local governmental unit.

(32)[(29)] Locally voted issue—An issue of bonds which has been authorized pursuant to a referendum approved by the voters of a political subdivision of the State of Texas.

(33)[(30)] Mortgage credit certificate—A certificate of the nature described in the code, §25.

(34) Prepayments—Reduction of the principal amount of a loan that was originated from bond proceeds resulting in a corresponding reduction of the principal amount of the bond proceeds.

(35)[(31)] Private activity bond—A private activity bond within the meaning given that term under the code.

(36)[(32)] Project—Any eligible facility, as described in the application for reservation or carryforward, proposed to be financed, in whole or in part, by an issue of bonds. With respect to qualified mortgage bonds or student loan bonds, the department shall consider the project or purpose to be the provision of financial assistance to qualifying mortgagors or students within all or any portion of the jurisdiction of the issuer.

(37)[(33)] Qualified application—A completed application for reservation or an application for carryforward.

(38)[(34)] Qualified bond—A qualified bond within the meaning given that term under the code.

(39)[(35)] Qualified mortgage bond—A qualified mortgage bond within the meaning given that term under the code, including mortgage credit certificates.

(40) Qualified small issue bond—A qualified small issue bond within the meaning given that term under the code.

(41)[(36)] Related person—Related person within the meaning given that term under the code.

(42)[(37)] Reservation—A reservation of a portion of the state ceiling for a specific bond issue.

(43)[(38)] Reservation date—The earliest date on which a qualified application for reservation is accepted for filing with the department pursuant to the Act and a portion of the state ceiling is or becomes available to the issuer.

(44)[(39)] Rules—Any statement of general applicability that implements, in-

terprets, or prescribes law or policy, or describes the department's procedures and practice.

(45)[(40)] Significant expenditures—Expenditures greater than the lesser of \$1 million or 10% of the reasonably anticipated cost of the project.

(46)[(41)] Staff—The staff of the department.

(47)[(42)] State—State of Texas.

(48)[(43)] State ceiling—The amount of the authority in the state to issue tax exempt private activity bonds during the calendar year, as determined under the code.

(49)[(44)] State voted issue—An issue of bonds which has been authorized pursuant to a statewide referendum approved by the voters of the state.

(d)-(f) (No change.)

§165.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after January 2, the department will accept applications for reservation from [the state's ceiling for each year is allocated to] issuers authorized to issue private activity bonds. [Except as provided for in the Act, §2 and §3, reservations are granted in the order of receipt of qualified applications, regardless of the amount or location of the issue.] The department shall not grant a reservation to any issuer prior to January 10. If two or more issuers file an application for reservation of the state ceiling exclusively for reservations by issuers of state-voted issues, qualified small issue bonds, or all other bond issues on or before January 10, the order of reservations will be determined by the department by lot not later than the fourth business day after January 10. If two or more housing finance corporations apply for a reservation of state ceiling described in the Act, §2(b)(1), on or before January 10, the order of reservations will be determined by categories of priority described in the Act, §3(c) not later than the fourth business day after January 10.

(c) The order by which issuers that filed qualified applications during the period of January 2-January 10 but did not receive a reservation pursuant to subsection (b) of this section receive a reservation pursuant to subsection (b) of this section receive a reservation on September 1, is determined by lot. Lots drawn by local housing finance corporations for qualified mortgage bonds will establish a place in the September 1 line for those issuers and reservation will be granted in accordance with the categories of priority specified in the Act, §3(c)(1)-(4).

(d) All applications for a reservation filed after January 10 by any issuer shall be accepted for filing by the department in their order of receipt.

(e)[(c)] The amount of the state's ceiling that has not been reserved prior to December 15 and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation, may be designated, by the department, as carryforward for the carryforward purposes outlined in the code through submission of the application for carryforward and any other required documentation.

(f)[(d)] An issuer may submit an application for carryforward to the department at any time during the year through the last business day in December.

(g)[(e)] Issuers will be eligible for carryforward according to the priority classifications listed in the Act.

§165.3. Filing Requirements for Applications for Reservation.

(a) (No change.)

(b) Application filing. The issuer shall submit one original and two copies of the application for reservation. Each application must be accompanied by the following:

(1) the application [\$500 non-refundable filing] fee;

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

(4) If unexpended proceeds exist from a prior issue or issues of bonds, a statement by the trustee as to the current amount of unexpended proceeds that exists for each such issue. The issuer shall certify to the current amount of unexpended proceeds that exist for each such issue should a trustee not administer the bond issues;

(5)[(4)] if unexpended proceeds other than prepayments exist from a prior issue or issues of bonds, a definite and binding financial commitment agreement, in such form as the department finds acceptable, to expend the unexpended proceeds within 12 months after the date of receipt by the department of an application for reservation;

(6)[(5)] if unexpended proceeds exist from a prior issue or issues of bonds, a written opinion of legal counsel, addressed to the department, to the effect, that the department may rely on the representation contained in the agreement to fulfill the requirements of the Act and that the agreement constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement; [and]

(7) [(6)] a written opinion of legal counsel, addressed to the department, to the effect that the bonds are required to be

included under the state ceiling and that the issuer is authorized under the laws of the state to issue bonds for projects of the same type and nature as the project which is the subject of the application. This opinion shall cite by constitutional or statutory reference, the provision of the Constitution or law of the state which authorizes the bonds for the project; and

(8) a statement by a qualified mortgage bond issuer certifying to the most recent closing of qualified mortgage bonds or the most recent date of a reservation received for mortgage revenue bonds and a statement of the governmental unit(s) for which the local population was based for the issuance of bonds or for receipt of a reservation.

(c) Bond authorization requirements. [Additional documents] Not later than 35 [20] days after an issuer's reservation date, the issuer shall [following documents must be filed with] submit to the department [accompanied by the completed additional documents checklist]:

(1) one-third of the closing fee [a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue];

(2) a certificate signed by the issuer that certifies the principal amount of the bonds to be issued or the portion of the state ceiling that will be converted to mortgage credit certificates; and [if one is required, a copy of the approval of the governmental unit or governmental units, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds for which the code does not require such a public hearing and approval of a governmental unit or governmental units]

(3) a list of finance team members with their addresses and telephone numbers. [a written commitment from a lender, financial institution, underwriter, investment banker, or other purchaser agreeing to purchase the bonds upon delivery by the issuer;]

[(4) documentation of the interest rate on the bonds or the formula by which the interest will be calculated;

[(5) a copy of the maturity schedule for the bonds; and

[(6) if applicable, an affidavit or copy thereof, of the publisher of the newspaper or newspapers in which the notice of the public hearing required by the code was published, demonstrating that notice of such public hearing was published.]

(d) Closing fee. Not later than the fifth day after the day on which the bonds are closed the issuer shall submit the remaining two-thirds of the fee.

(e) Closing documents. Not later than the fifth day after the day on which

the bonds are closed the issuer shall file with the department.

(1) a certificate of delivery;

(2) a certified copy of the bond resolution authorizing the issuance of bonds, and setting forth the specific principal amount of the bond issue;

(3) If one is required, a copy of the approval of the governmental unit or governmental units, certified by a public official with the authority to certify such approval. This requirement shall not apply to any bonds for which the code does not require such a public hearing and approval of a governmental unit or governmental units; and

(4) other documents relating to the issuance of bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule; and

(D) purchaser or purchasers.

(f) Closing documents for mortgage credit certificates. Such documents shall include:

(1) a certified copy of the issuer's resolution electing to convert state ceiling to mortgage credit certificates; and

(2) issuer's mortgage credit certificate election.

(g)[(d)] Additional information. The department may require additional information at any time before granting a certificate of reservation or certificate of allocation.

§165.5. Consideration of Qualified Applications by the Department.

(a) A submission required by the Act must be delivered in person to the department at its offices during normal business hours or sent by overnight delivery, certified or registered mail, postage prepaid, addressed to the department. The department shall note on the face of the documents the date and time that they are received and provide the issuer with a receipt describing the document received and the date and time of receipt. The department will review the application to determine if it is complete. The department shall return any application not in substantial compliance with the Act and these sections.

(b)-(c) (No change.)

(d) If at any time the amount of the state ceiling or portion of the state ceiling

reserved for qualified mortgage bonds, [and] state voted issues, qualified small issue bonds, or all other bond issues has been exhausted, applications which would otherwise qualify for a reservation shall be received and dated and receive reservations as provided in subsection (e) of this section.

(e) If at any time none of the state's ceiling remains available for certificates of reservation, but additional amounts become available later because of cancellations or any other reason, the department shall give a certificate of reservation with respect to qualified applications. Such certificates of reservation shall be given, to the extent that the amounts become available, with respect to qualified applications in the chronological order, determined by lot or by date and time [,] of receipt [in which they were received] by the department.

(f) After August 25 but prior to September 1, if any portion of the state ceiling set aside exclusively for the Texas Housing Agency is not subject to a reservation, such portion prior to September 1 shall be available exclusively to issuers of qualified mortgage bonds in accordance with the Act, §3(c).

(g) A reservation that is received by an issuer of qualified mortgage bonds for only a portion of the amount requested in the application for reservation shall be considered a reservation for the calendar year regardless of the amount reserved, and if an application for a reservation is submitted in the following calendar year by such issuer, as described in the Act, §3(c), the category of priority will be determined in accordance with the Act, §3(c) (3), and the order determined by the Act, §3(c)(4) [(g) On a monthly basis, qualified applications must be certified as current to maintain their chronological order for a reservation of the state ceiling. A letter from the issuer, addressed to the department and certifying that the information contained in the qualified application and all items accompanying the application are and remain accurate and in full force and effect, except as may be specifically set forth in any amendment to the qualified application (which does not result in the application failing to constitute a qualified application) will constitute such certification. A reservation date will not be given by the department until the receipt of such certification].

(h)[(f)] If any change in a qualified application or in any of the items accompanying the application should occur prior to the date state ceiling becomes available to an issuer, the issuer shall promptly notify the department of any such change. Upon state ceiling becoming available, an issuer, within three days upon receipt of notice from the department that a portion of the state ceiling will be available to the issuer, must confirm and certify that the information contained in the qualified application and all items accompanying the applica-

tion are and remain accurate and in full force and effect, except as may be specifically set forth in any amendment to the qualified application (which does not result in the application failing to constitute a qualified application), which amendment will constitute such certification. Prior to receiving a reservation, an issuer may amend the application to change the amount of the state ceiling requested, but the department may not accept an amendment to increase the amount of the state ceiling requesting unless at the time of the amendment seeking an increase in the amount of state ceiling there are no other qualified applications pending, subsequent in order to said application, for which state ceiling is not available. A reservation date will not be given by the department until the receipt of such certification.

(i)[(h)] Upon notice by the department that a portion of the state ceiling will be available to the issuer for less than the requested amount, the issuer must confirm in writing its acceptance or denial of the amount available, within three days. Refusal by an issuer to accept a certificate of reservation for less than the amount requested in a qualified application shall not change the chronological order in which such issuer will be offered a certificate of reservation.

§165.6. Expiration and Extension Provisions.

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

(d) When a closing on bonds covered by a certificate of reservation has occurred, the issuer's reservation will be cancelled if the closing documents and fee described in §165.3(d) of this title (relating to Filing Requirements for Applications for Reservation) herein are not filed with [the certificate of delivery shall be filed with] the department not later than the fifth day after the day of closing. [Failure of the issuer to submit the certificate of delivery before this deadline does not affect the issuer's reservation, except that if the issuer does not submit the notice before December 29, the issuer's reservation is cancelled.]

§165.7. Cancellation, Withdrawal, and Penalty Provisions.

(a) If the issuer does not timely submit the bond authorization requirement described in §165.3(c) of this title (relating to Filing Requirements for Applications for Reservation) [additional documents required by the Act and these sections], the issuer's reservation is cancelled and during the 90-day period beginning on the reservation date of the cancelled reservation;

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

(b) If the closing documents and fee are not received within five days after

the closing described in §165.3(d) of this title (relating to Filing Requirements for Applications for Reservation) [If a closing on the bonds covered by a certificate of reservation does not timely occur], the issuer's reservation is cancelled and during the 120-day period beginning on the reservation date of the cancelled reservation:

(1)-(2) (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 November 6, 1989.

TRD-8910602

William D. Taylor
Executive Director
Texas Department of
Commerce

Earliest possible date of adoption: December 15, 1989

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

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

LSCA Annual Program and Long Range Plan

• 13 TAC §1.21

The Texas State Library and Archives Commission proposes an amendment to §1.21, concerning the federal Library Services and Construction Act Long Range Plan and Annual Program. The documents describe the types of assistance and services that will be available to libraries and systems of libraries. The agency proposes to adopt a plan for fiscal years 1990-1993 and an annual program for fiscal year 1990 by reference.

Raymond Hitt, assistant state librarian, has determined that there will be fiscal implications for state and local government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section is in effect is an estimated increase in revenue of \$602,561 for fiscal year 1990; and \$497,443 for fiscal year 1991. The effect on local government for the first five year period the section is in effect is an estimated increase in revenue of \$6,775,219 for fiscal year 1990; and \$6,703,337 for fiscal year 1991.

Mr. Hitt 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 as proposed will be enhanced library services through the addition of library materials to public library collections, continuing education for library staff, and interlibrary loan services for public, academic, and special libraries. There will be no effect on small businesses as a result of

enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Raymond Hitt, Assistant State Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711.

The amendment is proposed under the Government Code, Chapter 441, §009, which provides the Texas State Library and Archives Commission with the authority to adopt a state plan for improving library services in Texas.

§1.21. Adoption by Reference. The Texas State Library and Archives Commission adopts by reference the LSCA Annual Program 1990 [1989], and Long Range Plan, 1990-1993 [1989-1991]. Copies may be obtained from [the Library Development Division of] the Texas State Library, P.O. Box 12927, Austin, Texas 78711.

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 November 3, 1989.

TRD-8910690 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: December 15, 1989

For further information, please call: (512) 463-5440

◆ ◆ ◆
• 13 TAC §1.23

The Texas State Library and Archives Commission proposes an amendment to §1.23, concerning the federal Library Services and Construction Act Title II Program. The agency proposes to revise the guidelines for determining recipients of Title II grants for construction of public libraries from federal fiscal year 1990 funds. The agency proposes to adopt this plan and program by reference.

Raymond Hitt, Assistant State Librarian, has determined that there will be fiscal implications for local government as a result of enforcing or administering the section. The effect on local government for the first five-year period the section is in effect is an estimated increase in revenue of \$1,226,499 for fiscal years 1991 and 1992. There will be no fiscal implications for state government as a result of enforcing or administering the section.

Mr. Hitt, 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 as proposed will be construction of new public libraries and renovation of existing public libraries. There will be no effect on small businesses as a result of enforcing the section. 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 Raymond Hitt, Assistant State Librarian,

Texas State Library, P.O. Box 12927, Austin, Texas 78711.

The amendment is proposed under the Government Code, Chapter 441, §009, which provides the Texas State Library and Archives Commission with the authority to adopt a state plan for improving library services in Texas.

§1.23. Adoption by Reference of LSCA Title II. The Texas State Library and Archives Commission adopts by reference the 1990 [1989] LSCA Title II Program. Copies may be obtained from the Texas State Library, P.O. Box 12927, Austin, Texas 78711.

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 November 3, 1989.

TRD-8910689 Raymond Hitt
Assistant State Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: December 15, 1989

For further information, please call: (512) 463-5440

◆ ◆ ◆
TITLE 16. ECONOMIC
REGULATION

Part IV. Texas Department
of Licensing and
Regulation

Chapter 60. Texas Commission
of Licensing and Regulation

Subchapter A. Authority

• 16 TAC §60.1

(Editor's Note: The Texas Department of Licensing and Regulation 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 Commission of Licensing and Regulation proposes new §60.1, concerning the authority of the Texas Commission of Licensing and Regulation to continue the functions of the Texas Department of Labor and Standards under the new name of the Texas Department of Licensing and Regulation.

Elvis G. Schulze, acting general counsel, 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. Schulze, 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 as proposed will be complying with the 71st Legislature to allow the continuation of the Texas Department of Labor and Standards under the new

name of the Texas Department of Licensing and Regulation, to regulate the persons and entities of the programs under the department's jurisdiction. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Elvis G. Schulze, Acting General Counsel, Texas Department of Licensing and Regulation, 920 Colorado, Austin, or P.O. Box 12157, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 9100, which provide the Texas Commission of Licensing and Regulation with the authority to implement, administer, and enforce the Act relating to the continuation of the Texas Department of Labor and Standards under the new name of the Texas Department of Licensing and Regulation.

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 November 7, 1989.

TRD-8910712 Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Proposed date of adoption: January 3, 1990

For further information, please call: (512) 463-3127

◆ ◆ ◆
Subchapter B. Organization of
the Commission of
Licensing and Regulation

• 16 TAC §§60.21-60.26

(Editor's Note: The Texas Department of Licensing and Regulation 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 Commission of Licensing and Regulation proposes new §§60.21-60.26, concerning organization of the Commission of Licensing and Regulation. The new sections are proposed to provide organization of the Commission of Licensing and Regulation outlining the commission's and commissioner's responsibilities, duties, and relevant general provisions needed to enforce and administer rules of the department.

Elvis G. Schulze, acting general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Schulze, 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 a clear and concise outline of the powers and duties of the Texas Commission of Licensing and Regulation enabling the

commission and commissioner to regulate programs of the department. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Elvis G. Schulze, Acting General Counsel, Texas Department of Licensing and Regulation, 920 Colorado, Austin, or P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 9100, which provide the Texas Commission of Licensing and Regulation with the authority to formulate policy objectives for the department, approve the operating budget of the department, and adopt rules as necessary for its own procedures.

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 November 7, 1989.

TRD-8910710 Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Proposed date of adoption: January 3, 1990

For further information, please call: (512) 463-3127



Subchapter C. Fees

- 16 TAC §§60.61-60.63, 60.65-60.67, 60.69, 60.70, 60.75, 60.78-60.80

(Editor's Note: The Texas Commission of Licensing and Regulation 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 Commission of Licensing and Regulation proposes new §§60.61-60.63, 60.65-60.67, 60.69, 60.70, 60.75, and 60.78-60.80, concerning the fees for the issuance of licenses, permits, and certifications, registrations, examinations, and inspections required by the department for all the separate divisions under the jurisdiction of the department. This includes all related renewal, duplications, late, examination, inspection, and exam fees. The fees are proposed under authority to Texas Civil Statutes, Article 9100, §12(f).

Elvis G. Schulze, acting general counsel, has determined that there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated increase in revenue of \$20,983 for fiscal year 1989; and \$19,700 for fiscal years 1990-1993. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Schulze, also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as

proposed will be consumer protection from unregistered or unlicensed entities.

The effect on small businesses as a result of enforcing the sections will be the cost of initial registration and renewal to comply with \$60.78 (concerning talent agencies). The cost of compliance for small businesses compared to the largest businesses affected by the sections will be the same. The anticipated economic cost to persons who are required to comply with the section as proposed will be \$20,983 for fiscal year 1989; and \$19,700 for fiscal years 1990-1993 for initial registration and required renewal fees for talent agencies.

Comments on the proposal may be submitted to Elvis G. Schulze, Acting General Council, Texas Department of Licensing and Regulation, 920 Colorado, Austin, Texas, 78711 or P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 9100, §12(f), which provides the Commission of Licensing and Regulation with the authority to set fees to cover the costs of administering programs and activities administered by the department.

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 November 7, 1989.

TRD-8910708 Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Proposed date of adoption: January 3, 1990

For further information, please call: (512) 463-3127



Subchapter D. Practice and Procedures

- 16 TAC §§60.100-60.109, 60.120-60.124, 60.150-60.159, 60.170-60.177, 60.190-60.195

(Editor's Note: The Texas Department of Licensing and Regulation 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 Commission of Licensing and Regulation proposes new §§60.100-60.109, 60.120-60.124, 60.150-60.159, 60.170-60.177, 60.190-60.195, concerning practices and procedures for the Commission of Licensing and Regulation. These sections shall provide the commission with procedures with which to enable the Texas Department of Licensing and Regulation to govern and implement the laws of the state within its jurisdiction. These procedures provide for the institution, conduct, and determination of all causes and proceedings before the department where notice and hearing is required.

Elvis G. Schulze, acting general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering

the sections.

Mr. Schulze, 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 a clear and concise outline of the department's procedures for all hearings for persons and entities under the jurisdiction of the department. There will be no effect on small businesses as a result of enforcing the section. 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 Elvis G. Schulze, Acting General Counsel, Texas Department of Licensing and Regulation, 920 Colorado, Austin, or P.O. Box 12157, Austin, Texas 78711.

The new sections are proposed under Texas Civil Statutes, Article 9100, §17, which provide the Texas Department of Licensing and Regulation with the authority to adopt rules which relate to administrative penalties and sanctions that may be enforced against persons or entities regulated by the department.

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 November 7, 1989.

TRD-8910706 Larry E. Kosta
Acting Commissioner
Texas Department of
Licensing and
Regulation

Proposed date of adoption: January 3, 1990

For further information, please call: (512) 463-3127



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

- 25 TAC §97.17

The Texas Department of Health proposes new §97.17, concerning possible exposure of state employees to HIV. The new section covers the criteria that constitute possible exposure of state employees to HIV while they are performing duties of employment with the state. The new section will implement the provisions of Senate Bill 959, §5.05, 71st Legislature, 1989.

Dr. Robert A. MacLean, deputy commissioner for professional services, has determined that for each year of the first five years 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 as proposed. There also will be no impact on local employment.

Dr. MacLean also has determined that for the first five-year period that the section will be in effect the public benefit of the section will be that state employees and the general public will be aware of the the criteria that constitute the possible exposure of state employees to HIV. There will be no effect on small businesses as result of enforcing the section. The proposal will have no anticipated economic cost to persons who are required to comply with the section as proposed.

Oral and written comments on the proposal may be submitted to Robert A. MacLean, M.D., Deputy Commissioner for Professional Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7378. Dr. MacLean will accept comments for 30 days after publication of the proposal in the *Texas Register*.

The new section is proposed under Senate Bill 959, §5.05, 71st Legislature, Regular Session, 1989, which provides the Board of Health the authority by rule to prescribe the criteria that constitute possible exposure of state employees to HIV; Health and Safety Code, §12.001, which provides the Board of Health with the authority to adopt rules to implement every duty imposed by law on the Board, the Department, and the Commissioner of Health.

§97.17. Possible Exposure of State Employees to HIV.

(a) This section covers the criteria that constitute possible exposure of state employees to HIV while they are performing duties of employment with the State of Texas.

(b) The criteria that constitute possible exposure to HIV of state employees are described in §97.10(a)(2) of this title (relating to Notification of Emergency Medical Service Employee, Peace Officer, or Firefighter of Possible Exposure to a Disease.)

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 November 6, 1989.

TRD-8910647

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

Proposed date of adoption: January 27, 1990.

For further information, please call: (512) 458-7378

◆ ◆ ◆ Subchapter E. Procedures on Long Term Care Facilities

• 25 TAC §145.91

The Texas Department of Health proposes an amendment to §145.91, concerning administrative penalties for nursing homes. The amendment will provide for a penalty for facility failure to comply with §145.94 of this title (relating to investigation of facility employees). Specifically, a facility will be subject to a penalty if it fails to verify a prospective employee's criminal conviction record and fails to deny or terminate the employment of individuals who are unemployable, as required by §145.94, and Senate Bill 332 and House Bill 1466, 71st Legislature, 1989. The amendment will also provide for penalties if the facility continued to employ an individual who had a conviction and if such an employee is involved in abuse or neglect which seriously injures the resident or causes a resident's death.

Stephen Seale, Chief Accountant III, has determined that for each year of the first five years the section will be in effect there will be no fiscal implications for state or local government. If penalties are assessed, there will be fiscal implications for small and large nursing facilities. The cost to a small facility (under 100 beds) would be approximately \$20 per employee for the \$1000 fine compared to an estimated \$7 per employee cost for a large facility (100 beds or more). A similar comparison would apply for the other fine categories (\$5000 and \$10,000). There will be no impact on local employment as a result of this amendment to the penalty system.

Mr. Seale also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing the section will be is the additional safeguard to assure facilities' compliance with existing statutes and standards and to insure protection of the facility residents from abuse and neglect. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Oral and written comments on the proposal may be submitted to Richard L. Butler, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709, for 30 days after publication of the proposed amendment in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, §242.037, which provides the Board of Health with the authority to adopt rules covering the licensing of nursing homes; §§242.066-242.069, which provide the Texas Department of Health with the authority to assess administrative penalties; §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 the Human Resources Code, Chapter 106 (Senate Bill 332 and House Bill 1466, 71st Legislature, 1989), covering criminal history checks of employees in certain facilities serving the elderly or disabled.

§145.91. Administrative Penalties.

(a)-(q) (No change)

(r) Conditions and assessments for deficiencies/violations warranting administrative penalties for nursing homes are described in the schedule that follows. The conditions and the subconditions or elements in the schedule primarily relate to existing standards in §§145.11-145.25 of this title (relating to Minimum Licensing Standards for Nursing Homes). Some conditions or elements relate to other rules or standards of this title which apply to nursing homes, such as §§145.251-145.261 of this title (relating to Medication Aide Training and Issuing Permits to Administer Medications), and some conditions or elements relate directly to Texas Civil Statutes, Article 4442c, or other laws. All conditions or elements which relate to such existing standards or directly to Texas Civil Statutes, Article 4442c or other laws have the appropriate section, subsection, or citation referenced. The standards are of Title 25 of the Texas Administrative Code.

Description of Conditions and Elements of Conditions	First Occurrence	Second Occurrence	Third or Subsequent Occurrence	Each Occurrence
	(1)	(2)	(3)	(4)
A. - T. (No change)				
<u>U. Failure to verify the criminal conviction record of an employee/applicant as required by 25 TAC §145.94 and/or failure to deny or terminate the permanent employment of a person identified in the criminal conviction report as unemployable (based on §145.94) or otherwise known by management to be unemployable (based on §145.94).</u>				
<u>1. The facility permanently employs an individual convicted of a crime or crimes.</u>				<u>\$1000</u>
<u>2. The facility permanently employs an individual convicted of a crime or crimes and the employee is involved in the abuse or neglect of one or more residents.</u>				<u>\$5000</u>
<u>3. The facility permanently employs an individual convicted of a crime or crimes and the employee is involved in the abuse or neglect of one or more residents which results in the SERIOUS INJURY (defined in element T) or DEATH of a resident. §145.94(a) through (k) §145.13(a)(2)(P)</u>				<u>\$10,000</u>

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 November 6, 1989.

TRD-8910646

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

Proposed date of adoption: January 27, 1990.

For further information, please call: (512) 458-7709

◆ ◆ ◆
Chapter 145. Long Term Care
Subchapter N. Minimum
Licensing Standards for
Facilities Serving the
Mentally Retarded Citizens
of Texas.

• 25 TAC §145.213

(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 new §145.213, concerning an informal administrative review process for facilities for the mentally retarded. The new section provides that the facilities will have the opportunity for a review of the findings of department survey teams prior to the findings becoming final. The section covers purpose of the review; application of the review process; provider's responsibility; public health region's responsibility; and department's central office responsibility. The new section implements the provisions of Senate Bill 1426, 71st Legislature, 1989.

Stephen Seale, Chief Accountant III, Budget Division, has determined that for the first five-year period that the section as proposed is in effect there will be no fiscal implications to state or local government as a result of administering or enforcing the new section. There will be no impact on local employment.

Mr. Seale also has determined that for each year of the first five years that the section as is in effect the public benefit anticipated as a result of enforcing the section will be that facilities for the mentally retarded will have the opportunity for an informal review of department survey findings before they become final. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Oral and written comments on the proposal may be submitted to Richard Butler, Chief, Bureau of Long Term Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7709. Mr. Butler will accept comments for 30 days after publication of the proposal in the *Texas Register*.

The new section is proposed under the Health and Safety Code, Chapter 12, as amended by Senate Bill 1426, 71st Legislature, 1989, which provides the Board of Health with the authority by rule to adopt procedures for an informal review of Department survey findings in facilities for the mentally retarded; and the Health and Safety Code, §12.001 which provides the board with the authority to adopt rules for the implementation of every duty imposed by law on the board, the department, 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 November 6, 1989.

TRD-8910644

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

Proposed date of adoption: January 27, 1990.

For further information, please call: (512) 458-7706

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Chapter 169. Veterinary Public
Health

Riding Stable Registration
Program

• 25 TAC §§169.81-169.89

The Texas Department of Health proposes new §§169.81-169.89, concerning riding stable registration program. The new sections will cover standards and fees charged for the state registration of riding stables. Specifically, sections cover purpose; definitions; standards; inspections; registration; renewal; fees; penalties; and denial, suspension, and revocation of registration. The new sections implement House Bill 1787, 71st Legislature, 1989.

Stephen Seale, chief accountant III, has determined that for the first five year period the sections will be in effect there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated additional cost of \$50,000 and an estimated increase in revenue of \$50,000 per year for each year of fiscal years 1990-1994. There will be no effect on local government. There will be no substantial cost to small businesses except for the \$200 registration, and approximately \$100 to the veterinarian for the required inspection. The cost to a small business on a per employee basis, with two employees would be \$150 per employee the first year and \$100 per employee each year thereafter. Under the assumption that the largest businesses affected would employ 10 persons, the cost per employee would be \$30 and \$20 for the same period. There will be no impact on local employment as a result of enforcement of the proposal.

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 assure that adequate facilities are provided, that animals receive humane care and treatment, and that certain infectious diseases are controlled. There will be no economic cost to individuals.

Oral and written comments on the proposal may be submitted to Foy V. McCasland, D.V.M., M.P.H., Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 835-8100. Comments will be received for 30 days from the date of publication in the *Texas Register*.

The new sections are proposed under House Bill 1787, 71st Legislature, 1989, which provides the Texas Board of Health with the authority to adopt rules and charge fees to implement a riding stable registration 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.

§169.81. Purpose. The purpose of these rules is to establish standards regarding the care of equines in riding stables which will promote humane conditions for these animals and public health and safety.

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

Act - House Bill 1787, 71st Legislature, Regular Session, 1989.

Adequate food and water - Food and water which is sufficient in amount and appropriate for the particular type of animal to prevent starvation, dehydration, or significant risk to the animal's health from a lack of food or water.

Adequate heat - Heat necessary to prevent physical damage to an animal from chilling or freezing.

Adequate ventilation - The provision of fresh air to an enclosure by means of windows, doors, vents, or air-conditioning so as to minimize drafts, odors, and moisture condensation.

Application - A written request to the department for a registration, temporary registration, or renewal of registration. The application must be on the form prescribed by the department.

Board - Texas Board of Health.

Carriage - A two or four-wheeled passenger vehicle pulled by an equine.

Carriage equine - Any equine which is used by its owner or other person to pull any carriage, in exchange for a fee. An equine rented or leased by its owner to another for any of the foregoing purposes shall be deemed to be a carriage equine for the purposes of this title.

Department - Texas Department of Health.

Equine - Any member of the Equidae family, including equines, mules, asses, donkeys, and ponies.

Humane care - Humane care is, but is not limited to, the provision of adequate heat, ventilation, sanitary shelter, and adequate food and water, consistent with the normal requirements and feeding habits of the animal's size, species, and breed.

Identification - Any rental equine must be identified by breed, sex, color, and markings (nomenclature by approved method). Lip tattoos and/or brands may be used in lieu of markings.

Owner - The person who operates an establishment and who is responsible for the shelter and care of equines for hire.

Registered establishment - Any facility, stable, or paddock where rented equines are kept that conforms to the requirements in these sections and is duly registered by the Texas Department of Health.

Rental equine - Any equine let for hire to be ridden or driven, either with or without the furnishing of riding or driving instruction.

Veterinarian - A person licensed to practice veterinary medicine in the State of Texas.

Work - An equine is considered to be at work when it is out of its stable or paddock and presented to the public as being available for riding or pulling a carriage.

§169.83. Standards.

(a) Housing.

(1) A shelter, at a minimum, shall consist of a three-sided building with roofing constructed to afford the utmost protection in inclement weather. The walls shall not have sharp, protruding objects that may cause injury to the animal: i.e. nails, broken boards, etc. Every equine shall be quartered in a clean, dry, well-ventilated, but not drafty shelter of not less than 100 square feet per animal. Necessary blankets shall be maintained and available if needed during the cold winter weather.

(2) The premises and stable must be in good state of repair, in a clean and sanitary condition, and adequately ventilated and disinfected when needed.

(3) A fire or smoke detection device shall be present in all stables, with an alarm audible by human hearing via telephone or loudspeaker.

(4) Equines shall be adequately quartered. Stables and stalls shall be clean and dry. Sufficient bedding of straw, shavings, or other suitable material shall be furnished and changed as often as necessary to maintain them in a clean and dry condition. Bedding for concrete floors shall be at least six inches of materials. Bedding for clay, dirt or rubber base floor shall be at least three inches of materials.

(5) While in stalls, equines shall have continuous access to drinking water. Water shall be kept clean and fresh.

(6) Minimum indoor standards of shelters shall include the following:

(A) the ambient temperature shall be compatible with the health of the animal; and

(B) indoor housing facilities shall be adequately ventilated by natural or mechanical means to provide for the health of the animals at all times.

(7) Minimum outdoor standards of shelters shall include the following.

(A) When sunlight is likely to cause heat exhaustion of an animal tied outside, sufficient shade by natural or artificial means shall be provided to protect the animal from direct sunlight.

(B) Natural or artificial shelter appropriate to the local climatic conditions shall be provided as necessary for the health of the animal.

(8) Minimum space requirements for both indoor and outdoor enclosures shall include the following:

(A) the housing facilities shall be structurally sound and maintained in good repair to protect the animals from injury and to contain the animals;

(B) enclosures shall be constructed and maintained so as to provide sufficient space to allow each animal adequate freedom of movement. Inadequate space may be indicated by evidence of debility, stress or abnormal behavior patterns.

(b) Sanitation.

(1) Minimum standards of sanitation for both indoor and outdoor enclosures shall include cleaning as required to prevent accumulation of excreta and other waste materials, dirt and trash.

(2) Adequate cleaning and disinfecting equipment and disinfectants must be maintained on all premises at all times.

(3) All pens must be adequately drained to preclude animals from standing in mud or water for extended periods of time.

(4) Any insecticides/pesticides used must be labeled "Approved for equines and/or for their use in their environment."

(c) Health and disease control.

(1) Every registered establishment, within two weeks after registration, and at intervals of not more than one year after that date, shall have all equines examined by a veterinarian. The examination shall include the general physical condition of each equine, its teeth, hoofs and shoes, and its stamina and physical ability to carry

the loads and to perform the work or duties required of it. The examination shall also include a record of any injury, disease, or deficiency observed at the time, together with any prescription or humane correction or disposition of the same. If any equine is sick, diseased, lame, or injured, the registrant shall take immediate action to obtain any required veterinary treatment, care, and attention. The equine may not:

(A) be moved, ridden, or driven except for the immediate purpose of humane keeping or pasturing and obtaining the medical or surgical care and attention required; or

(B) be used or worked during the recovery or convalescent period unless the owner has in his possession a signed and dated certificate obtained from a veterinarian which duly certifies that the equine's condition will not be impaired or aggravated by the activity.

(2) The following shall deem an equine unfit for work:

(A) lameness of any kind, except that of a mechanical nature listed on the health certificate;

(B) open sores or wounds caused or likely to be irritated by the bearing surfaces of harness, bridle, or girths;

(C) obvious signs of emaciation, dehydration, or exhaustion; and

(D) loose shoes.

(3) All rental equine shall be vaccinated on a yearly basis for rabies, Venezuelan equine encephalomyelitis, eastern equine encephalomyelitis, western equine encephalomyelitis, and Tetanus. Optional immunizations may also be administered at the owners discretion. Routine worming must be performed on a quarterly basis. There must be documentation with identification that the vaccinations were performed.

(d) Humane care and treatment.

(1) Animals must be provided with adequate food and water and while working must have access to water at reasonable intervals.

(2) Adequate and humane care must be provided for the animals at the facility.

(3) Animals kept outside will be provided protection from weather (shade from the sun, shelter from the rain, snow and cold) and will be maintained in an area free from waste and unsanitary debris. Animals not cared for in this manner may be considered abused or neglected. A blanket, in good condition and of sufficient size to

drape the body of the equine, shall be maintained and available if needed during cold weather.

(4) Owners are responsible for the acts of any person or persons to whom they rent equines for riding or driving purposes with respect to all acts where unjustified physical pain, suffering, or death is inflicted upon any equine.

(5) All animals shall be stabled or confined in a manner as to preclude fighting and to assure that they will not stray.

(e) Public notice.

(1) Each facility shall prominently display a notice consisting of the following information: "This facility is operated in compliance with the Texas Riding Stable Registration Requirements. Any person observing a violation of the requirements may report the violation to: Texas Department of Health, Bureau of Veterinary Public Health, 1100 West 49th Street, Austin, Texas 78756."

(2) Each facility shall prominently display its current registration certificate.

§169.84. Veterinary Inspection. The veterinarian performing the required inspection shall record the inspection findings on an inspection report form prescribed by the department. A copy of this inspection report signed by the veterinarian shall accompany each request for certificate of registration and each request for a renewal of registration.

§169.85. Certificate of Registration. An application for registration to operate an establishment must be made on a form prescribed by the department. Initial registration will be valid for two years from the date of issuance unless suspended or revoked.

§169.86. Certificate of Registration Renewal. An application for a renewal of registration to operate an establishment must be made on a form prescribed by the department. Each registration renewal will be valid for two years from the date of issuance unless suspended or revoked.

§169.87. Registration and Renewal Fee. Each initial registration and renewal fee will be \$100 for all riding stables with three or less equines and \$200 for all riding stables with four or more equines.

§169.88. Penalties. Any person, corporation, firm, renter, partnership or other entity that shall knowingly operate a riding stable without a certificate of registration issued by the department shall be in violation of the Act, and subject to penalties as provided by law.

§168.89. Denial, Suspension, and Revocation of a Certificate of Registration.

(a) All denials, suspensions, revocations of a certificate of registration will be done in accordance with the provisions of the Act, §5.

(b) All hearings concerning the denial, suspension, or revocation of a certificate of registration shall be in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a; and the department rules on formal hearings as described in Chapter 1 of this title (relating to the Board 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 November 7, 1989.

TRD-8910668

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

Proposed date of adoption: January 27, 1990.

For further information, please call: (512) 835-8100

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TITLE 28. INSURANCE
Part II. Industrial Accident Board
Chapter 69. Medical Examination Orders

• 28 TAC §69.25

The Industrial Accident Board proposes an amendment to §69.25, concerning bases for denial of medical examination orders on travel outside the area where the claimant lives. The proposed amendment deletes the reference to the area in which the claimant lives in requiring a travel statement. As amended, the section would require a travel statement in all requests and the carrier will further be required to affirm that the claimant's travel expenses have been tendered in advance, in compliance with 28 TAC §69.35.

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

There is no anticipated impact on employment, locally or statewide, as a result of the implementation of this amendment.

Mr. Fulcher, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an improvement in the understanding and compliance with this section. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Richard Fulcher, Acting Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Industrial Accident Board with the authority to adopt rules necessary for the administration of the workers' compensation laws.

§69.25. Bases for Denial.

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

(c) Ability to travel. [If the carrier should request an examination by a doctor whose practice is outside the area where the claimant lives, then a statement shall be] No examination will be ordered unless a statement is attached to the request setting out [the reason(s) for the request and] whether [such required travel would be suitable to the condition of] the claimant's [claimant] condition will allow travel to and attendance at the examination [and convenient and accessible to him/her]. The statement shall affirm that travel expenses will be tendered to the claimant in advance of any travel.

(d)-(f) (No change.)

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

Issued in Austin, Texas, on November 7, 1989.

TRD-8910714

Richard Fulcher
Acting Executive Director
Industrial Accident Board

Earliest possible date of adoption: December 15, 1989

For further information, please call: (512) 448-7960

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TITLE 34. PUBLIC FINANCE
Part XII. State Auditor's Office
Chapter 351. Administration

• 34 TAC §351.1

The State Auditor's Office proposes new §351.1, concerning the filing of audit reports by trustees of risk pools pursuant to the Texas Political Subdivision Employees Uniform Group Benefits Act, Local Government Code, Title 5, Subtitle C, Chapter 172. The proposed section would establish procedural rules regarding the time and manner for filing audit reports by trustees of risk pools as required by the Act, §172.010, Senate Bill 262, 71st Texas Legislature, Regular Session.

Lawrence F. Alwin, state auditor, has determined that for the first five-year period the

proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Mr. Alwin, 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 creation of a central repository of financial information relating to trustees of risk pools. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Lawrence F. Alwin, State Auditor, P.O. Box 12067, Austin, Texas 78711.

The new section is proposed under the Texas Political Subdivision Employees Uniform Group Benefits Act, Local Government Code, Title 5, Subtitle C, Chapter 172, which provides the State Auditor's Office with the authority to adopt procedural rules relating to the filing of audit reports and public access to such reports.

§351.1. Filing of Audit Reports for Trustees of Risk Pools.

(a) Each trustee of a risk pool established pursuant to the Texas Political Subdivision Employees Uniform Group Benefits Act, Local Government Code, Title 5, Subtitle C, Chapter 172, shall file annually with the state auditor a copy of its annual audit report.

(b) The report shall be filed not later than the 30th day after the date the trustee receives the report.

(c) The state auditor shall maintain the copies of the audit reports and make them available for public inspection during regular business hours. Copies will be provided upon payment of the cost of providing the copies as provided by Title 1, Texas Administrative Code, §111.62, concerning cost of copies of open records.

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 November 3, 1989.

TRD-8910635 Lawrence F. Alwin, CPA
State Auditor

Earliest possible date of adoption: December 15, 1989

For further information, please call: (512) 479-4700



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter K. Definitions

The Texas Department of Human Services (DHS) proposes amendments to §§29.1001, 29.1102, and 29.1112 and new §§29.1901, 29.1902, 29.2001, and 29.2002 concerning coverage of physical therapists' and psychologists' services.

The amendments to §§29.1001, 29.1102, and 29.1112 define newly covered providers, describe reimbursement, and set forth exclusions and limitations concerning the provision of services by licensed psychologists.

New §29.1901 and §29.1902 are proposed as new Subchapter T, Psychologists' Services. The new sections add licensed psychologist services as benefits of the Texas Medical Assistance Program and concern benefits, limitations, and conditions for participation.

New §29.2001 and §29.2002 are proposed under new Subchapter U, Physical Therapists' Services. These new sections add licensed physical therapists' services as benefits of the Texas Medical Assistance Program and concern benefits, limitations, and conditions for participation.

Burton F. Raiford, chief financial officer, has determined that for the first five-year period the proposed amendments to §§29.1001, 29.1102, and 29.1112 and new §29.1901 and §29.1902 are in effect there will be no fiscal implications as a result of enforcing or administering the proposed amendments and new sections.

Mr. Raiford also has determined that for the first five-year period new §29.2001 and §29.2002 will be in effect there will be fiscal implications for state government as a result of enforcing or administering the sections. The effect on state government for the first five-year period §29.2001 and §29.2002 are in effect will be an estimated additional cost of \$29,077 for fiscal year 1990; \$45,577 for fiscal year 1991; \$47,547 for fiscal year 1992; \$51,473 for fiscal year 1993; and \$56,873 for fiscal year 1994. There will be no fiscal implications for local government.

Mr. Raiford also has determined that for each year of the first five years the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the amendments and new sections will be greater access by Medicaid recipients to the services of psychologists and physical therapists. There will be no effect on small businesses as result of enforcing the section. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and new sections.

Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Development Services-678, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30

days of publication in the *Texas Register*. DHS will hold a public hearing to accept comments on the proposal. The hearing will be held at 9 a.m. on December 1, 1989, in the public hearing room 701 West 51st Street, Austin.

• 40 TAC §29.1001

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.

§29.1001. General Definitions for Purchased Health Services. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Physical therapist—A graduate of a program of physical therapy approved by the Commission on Accreditation in Physical Therapy Education (or one of the previously recognized accreditation bodies), and licensed by the state in which the services are performed.

Physical therapist assistant—A person licensed by the appropriate state licensure board as a physical therapist assistant and who provides physical therapy under the direction of a licensed physical therapist.

Physical therapy—Restorative services prescribed by a physician and provided to a recipient by a qualified physical therapist. It includes any necessary supplies and equipment.

Psychologist—A person with doctoral-level training in psychology who is licensed to practice as a psychologist in the state in which the service is performed.

Respiratory care practitioner—A person certified to practice respiratory care as defined in Texas Civil Statutes, Article 5412i.

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 November 8, 1989.

TRD-8910722 Cathy Rossberg
Agency Liaison, Policy
Development Services
Texas Department of
Human Services

Proposed date of adoption: January 1, 1990.

For further information, please call: (512) 450-3765



Subchapter L. General Administration

• 40 TAC §29.1102 and §29.1112

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.1102. Payments for Laboratory and X-ray Services, Radiation Therapy, Physical Therapists' Services, Physician Services, Podiatry Services, Chiropractic Services, Optometric Services, Ambulance Services, Dentists' Services, and Psychologists' Services. Subject to qualifications, limitations, and exclusions as provided in this chapter, payment to eligible providers for laboratory and X-ray services, radiation therapy, physical therapists' services, physician services, podiatry services, chiropractic services, optometric services, ambulance services, dentists' services, and psychologists' services, other than inpatient or outpatient services of a Title XIX hospital, must not exceed the reasonable charge for specific service as provided in §29.1104 of this title (relating to Reasonable Charges).

§29.1112. Exclusions and Limitations.

(a) Benefits do not extend to:

(1)-(18) (No change.)

(19) any parenteral hyperalimentation provided on an outpatient hospital basis or as an in-home service without prior authorization from the department's health insuring agent, nor to any outpatient hyperalimentation administered as a nutritional supplement.

(20)-(21) (No change.)

(b) Benefits for such services and supplies delivered to an individual in diagnosis or treatment of mental disease, psychoneurotic, and personality disorders while not confined as a bed-patient in a hospital may not exceed the lesser of \$312.50 or 62.5% percent of the allowable expense of such services and supplies during any one calendar year. This utilization control limitation may be exceeded when prior authorized on a case-by-case basis.

(c)-(d) (No change.)

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

Issued in Austin, Texas, on November 8, 1989.

TRD-8910723

Cathy Rossberg
Agency Liaison, Policy
Development Services
Texas Department of
Human Services

Proposed date of adoption: January 1, 1990.

For further information, please call: (512) 450-3765

Subchapter T. Psychologists' Services

• 40 TAC §29.1901, §29.1902

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with

the authority to administer public and medical assistance programs.

§29.1901. Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by the Texas Department of Human Services (DHS) or its designee, psychological counseling and services provided by a licensed psychologist are covered if the services:

(1) are within the psychologist's scope of practice, as defined by state law; and

(2) would be covered by the Texas Medical Assistance Program when they are provided by a licensed physician (M.D. or D.O.).

(b) To be payable, the services must be reasonable and medically necessary as determined by DHS or its designee.

(c) The Texas Medical Assistance Program does not reimburse for the services of a psychological assistant working under the direction of a licensed psychologist.

(d) Licensed psychologists who are employed by or remunerated by a physician, hospital, facility, or other provider may not bill the Texas Medical Assistance Program directly for psychologists' services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by the program, payment may be made to the physician, hospital, or other provider (if approved for participation in the Texas Medical Assistance Program) who employs or reimburses the licensed psychologist. The basis and amount of Medicaid reimbursement depends on the services actually provided, who provided the services, and the reimbursement methodology utilized by the Texas Medical Assistance Program as appropriate for the services and provider(s) involved.

§29.1902. Conditions for Participation. Subject to the specifications, conditions, limitations, and requirements established by the Texas Department of Human Services (DHS) or its designee, a psychologist must:

(1) be certified and licensed by the Texas State Board of Examiners of Psychologists or other appropriate state licensing authority;

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) be enrolled and participating in Medicare;

(4) be enrolled and approved for participation in the Texas Medical Assistance Program;

(5) sign a written provider agreement with DHS or its designee;

(6) comply with the terms of the provider agreement and all requirements of the Texas Medical Assistance Program, including regulations, rules, handbooks, standards, and guidelines published by DHS or its designee; and

(7) bill for services covered by the Texas Medical Assistance Program in the manner and format prescribed by DHS or its designee.

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 November 8, 1989.

TRD-8910724

Cathy Rossberg
Agency Liaison, Policy
Development Services
Texas Department of
Human Services

Proposed date of adoption: January 1, 1990.

For further information, please call: (512) 450-3765

Subchapter U. Physical Therapists' Services

• 40 TAC §29.2001, §29.2002

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

§29.2001. Benefits and Limitations.

(a) Subject to the specifications, conditions, requirements, and limitations established by the Texas Department of Human Services (DHS) or its designee, physical therapy services, which include necessary equipment and supplies provided by a licensed physical therapist, are covered by the Texas Medical Assistance Program. Covered services also include the services of a physical therapist assistant when the services are provided under the direction of and billed by the licensed physical therapist.

(b) To be payable, the services must be:

(1) within the physical therapist's scope of practice, as defined by state law;

(2) reasonable and medically necessary, as determined by DHS or its designee;

(3) expected to significantly improve the patient's condition in a reasonable and generally predictable period of time, based on the physician's assessment of the patient's restorative potential after any needed consultation with the therapist (benefits are not provided when the patient has reached the maximum level of improvement); and

(4) prescribed by a physician (M.D. or D.O.), who is licensed in the state in which he practices.

(c) The licensed physical therapist must have on file and available for inspection for each Medicaid recipient treated:

(1) a treatment plan established by the attending physician and/or by the therapist based on the physician's prescription which addresses diagnosis, modalities, frequency of treatment, expected duration of treatment, and anticipated goals; and

(2) a written prescription by the recipient's attending physician for the therapy services.

(d) Services related to activities for the general good and welfare of patients such as general exercises to promote overall fitness and flexibility and activities to provide diversion or general motivation are not considered appropriate therapy services and are not reimbursable under the Texas Medical Assistance Program (TMAP).

(e) Repetitive services designed to maintain function once the maximum level of improvement has been reached are not a benefit of the TMAP.

(f) Licensed physical therapists who are employed by or remunerated by a physician, hospital, facility, or other provider may not bill TMAP directly for physical therapy services if that billing would result in duplicate payment for the same services. If the services are covered and reimbursable by TMAP, payment may be made to the physician, hospital, or other provider (if approved for participation in TMAP) who employs or reimburses the licensed physical therapist. The basis and amount of Medicaid reimbursement depends on the services actually provided, who provided the services, and the reimbursement methodology utilized by TMAP as appropriate for the services and provider(s) involved.

(g) Services provided by or under the direction of a licensed physical therapist in long-term care facilities must be billed to the Nursing Home Program.

§29.2002. Conditions for Participation. Subject to the specifications, conditions, limitations, and requirements established by the Texas Department of Human Services (DHS) or its designee, a physical therapist must:

(1) be licensed by the Texas State Board of Physical Therapy Examiners or other appropriate state licensing authority;

(2) comply with all applicable federal and state laws and regulations governing the services provided;

(3) be enrolled and participating in Medicare;

(4) be enrolled in and approved for participation in the Texas Medical Assistance Program (TMAP);

(5) sign a written provider agreement with DHS or its designee;

(6) comply with the terms of the provider agreement and all requirements of the TMAP, including regulations, rules, handbooks, standards, and guidelines published by DHS or its designee; and

(7) bill for services covered by the TMAP in the manner and format prescribed by DHS or its designee.

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 November 8, 1989

TRD-8910725

Cathy Rossberg
Agency Liaison, Policy
Development Services
Texas Department of
Human Services

Proposed date of adoption: January 1, 1990.

For further information, please call: (512) 450-3765

Chapter 71. Public Information Disclosure of Information

The Texas Department of Human Services proposes amendments to §§71.3, 71.12, and 71.14, concerning release of electronically stored confidential client eligibility information, in its Public Information chapter. The amendments are proposed to provide information about the release of confidential information to requestors outside the department.

Burton F. Raiford, deputy commissioner for support operations, 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 as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the implementation of a system for safeguarding confidential client information such as address, income, financial resources, eligibility status, and other information. There will be no effect on small business as a result of enforcing the sections. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Cathy Rossberg, Agency Liaison, Policy Development Services Division-478, Texas Department of Human Services 222-E, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

• 40 TAC §71.3

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

§71.3. General Principles.

(a)-(d) (No change.)

(e) For eligibility verification and billing, outside entities, as outlined in subsection (f) of this section, may request the release of electronically stored, confidential information needed to determine client eligibility. Other confidential information that is not used to determine eligibility (including but not limited to child and adult protective services information) may not be released. To receive instructions concerning how to request electronically stored confidential, client eligibility information, Medicaid providers/vendors may contact their NHIC representatives, non-Medicaid providers may contact their Department of Human Services contract managers, government agencies may contact their Department of Human Services liaisons, and miscellaneous requestors may contact their local Department of Human Services offices. Any requestor wanting information that exceeds routine eligibility verification and billing information must submit a written authorization signed by the client for whom information is being requested. The following information must be included in these authorizations:

(1) statement to whom the information is to be released;

(2) specific information to be released;

(3) statement specifically authorizing the department to release the information;

(4) purpose of the release;

(5) statement about whether refusal to sign the release affects eligibility for or delivery of services; and

(6) effective and termination dates or process by which authorization may be terminated.

(f) Outside entities or nondepartment requestors include the following:

(1) Medicaid vendors;

(2) non-Medicaid providers;

(3) government agencies; and

(4) miscellaneous.

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 November 7, 1989.

TRD-8910715

Cathy Rossberg
Agency Liaison, Policy
Development Services
Texas Department of
Human Services

Proposed date of adoption: January 1, 1990.

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Confidentiality of Information

• 40 TAC §§71.12, 71.14

The amendments are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

§71.12. Restrictions on Disclosure of Information.

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

(d) Release of electronically stored confidential, client eligibility information must be according to the state and federal regulations governing confidentiality in the particular department program.

(e) Medicaid vendors and providers and their authorized representatives may routinely request client eligibility information and be given this information by telephone or in writing. Requestors must provide their Medicaid provider number on request of the department. Authorized representatives must have an agency agreement on file with the department. If these requestors require more than routine client eligibility information, they must submit a signed authorization from the client before the information is released.

(f) Non-Medicaid providers who are contractors and who provide services on behalf of the department may occasionally request and receive client eligibility information for verification purposes and delivery of services. For any information needed beyond eligibility

status, the provider must submit a signed authorization from the client before the information is released.

(g) Local, state, and federal agencies that operate welfare or assistance programs may request and receive electronically stored confidential, client eligibility information from the department according to subsection (a) of this section, §71.3(b) of this title (relating to General Principles), and §71.14 of this title (relating to Inquiries from Other Agencies).

(h) Requestors who are not included in subsections (e) through (g) of this section must submit a signed authorization from the client before the department is allowed to release the information. The information that the client is willing to have released must be stated in the authorization. Before using individual client releases, these requestors must attempt to secure needed information directly from the client.

§71.14. Inquiries from Other Agencies.

(a) It may be necessary in the administration of assistance programs to release information about applicants and recipients under certain conditions other than those outlined in §71.11 of this title (relating to Confidential Nature of the Case Record), 71.12 of this title (relating to Restrictions on Disclosure of Information), and §71.13 of this title (relating to Inquiries from Internal Revenue Service). It is impossible for the department to function properly without the cooperative efforts of certain agencies and officials, and the confidence of the people in general. For the purpose of securing cooperation in verifying facts, and to assure the public in general that the welfare programs are administered

according to law, information about applicants or recipients maybe disclosed in accordance with the conditions outlined as follows, provided there are no facts to indicate that the information will be used for purposes detrimental to the applicant or recipient:

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

(b) Agencies requesting electronically stored, confidential client eligibility information must have a signed memorandum of understanding (MOU) with the department that acknowledges compliance with state and federal confidentiality requirements. The MOU must state that any of their contractors requesting information from the department must agree in writing to the same confidentiality requirements covered in the MOU. The department only releases information that is authorized in a properly executed MOU. Government agencies that already have existing MOUs that address confidentiality requirements and specify releasable information are not required to initiate an additional MOU. Local department offices do not need separate MOUs with these agencies.

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 November 7, 1989.

TRD-8910716

Cathy Rosberg
Agency Liaison, Policy
Development Services
Texas Department of
Human Services

Proposed date of adoption: January 1, 1990.

For further information, please call: (512) 450-3765

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Justin
Alban

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 64. Practice and Procedure

- 16 TAC §§64.1-64.7, 64.31-64.38, 64.51-64.59, 64.71-64.75, 64.91-64.98, 64.111-64.116

The Texas Department of Licensing and Regulation has withdrawn from consideration for permanent adoption proposed new sections which appeared in the October 6, 1989, issue of the *Texas Register* (14 TexReg 5316). The effective date of this withdrawal is November 7, 1989.

Issued in Austin, Texas, on November 7, 1989

TRD-8910704

Elvis G. Schutze
Acting General Counsel
Texas Department of
Licensing and
Regulation

Effective date: November 7, 1989

For further information, please call: (512) 463-3127



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

- 25 TAC §97.14

The Texas Department of Health withdraws the emergency effectiveness of new §97.14, which was published in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4175).

The new section is being adopted permanently in this issue of the *Texas Register*.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910681

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

Effective date: November 26, 1989.

Proposal publication date: August 22, 1989.

For further information, please call: (312) 458-7207



Chapter 115. Home Health Care Agencies

Licensing and Regulation

- 25 TAC §115.18

The Texas Department of Health withdraws from consideration for permanent adoption the proposed amendment to §115.18 which was published in the May 23, 1989, issue of the *Texas Register* (14 Tex Reg 2497).

The amendment will be repropoed at a later date.

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 November 7, 1989.

TRD-8910687

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

Effective date: November 7, 1989.

Proposal publication date: N/A

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





Aileen! Finck!

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1.

ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

Subchapter C. Administration of Narcotics Control Program

General Powers

• 1 TAC §3.812

The Criminal Justice Division of the Office of the Governor adopts an amendment to §3.812, without changes to the proposed text as published in the July 11, 1989, issue of the *Texas Register* (14 TexReg 50).

Under the federal Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988, the State of Texas is eligible to receive federal block grants for programs that provide enhanced drug law enforcement. The Criminal Justice Division (CJD) of the Office of the Governor has been designated as the agency responsible for administration of these funds.

Section 3.812 reflects Criminal Justice Division administrative policies, requirements, and operating procedures that apply to drug law enforcement projects which may receive funding under the Texas Narcotics Control Program. The sections were adopted May 19, 1988. The amendment adds the newly enacted Anti-Drug Abuse Act of 1988 to the existing citation for source of funds.

The amendment is adopted under Texas Civil Statutes, Article 4413 (32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor with the authority to adopt rules, regulations, and procedures as may be necessary.

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 October 5, 1989.

TRD-8910625
Rider Scott
Executive Director
Office of the Governor,
Criminal Justice
Division

Effective date: November 27, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 463-1788

Applicable Statutes, Documents, and Forms

• 1 TAC §3.821

The Criminal Justice Division of the Office of the Governor adopts an amendment to §3.821, without changes to the proposed text as published in the July 11, 1989, issue of the *Texas Register* (14 TexReg 50).

Under the federal Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988, the State of Texas is eligible to receive federal block grants for programs that provide enhanced drug law enforcement. The Criminal Justice Division (CJD) of the Office of the Governor has been designated as the agency responsible for administration of these funds.

Section 3.821 reflects Criminal Justice Division administrative policies, requirements, and operating procedures that apply to drug law enforcement projects which may receive funding under the Texas Narcotics Control Program. The sections were adopted May 19, 1988. The amendment adds the newly enacted Anti-Drug Abuse Act of 1988 to the existing lists of applicable statutes, documents, and forms.

The amendment is adopted under Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor with the authority to adopt rules, regulations, and procedures as may be necessary.

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 October 5, 1989.

TRD-8910627
Rider Scott
Executive Director
Office of the Governor,
Criminal Justice
Division

Effective date: November 27, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 463-1788

Project Requirements

• 1 TAC §3.841

The Criminal Justice Division of the Office of the Governor adopts an amendment to §3.841, without changes to the proposed text as published in the July 11, 1989, issue of the *Texas Register* (14 TexReg 50).

Under the federal Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988, the State of Texas is eligible to receive fed-

eral block grants for programs that provide enhanced drug law enforcement. The Criminal Justice Division (CJD) of the Office of the Governor has been designated as the agency responsible for administration of these funds.

Section 3.841 reflects Criminal Justice Division administrative policies, requirements, and operating procedures that apply to drug law enforcement projects which may receive funding under the Texas Narcotics Control Program. The sections were adopted May 19, 1988. The amendment adds language regarding the purpose of projects eligible for funding, as reflected by the newly enacted Anti-Drug Abuse Act of 1988.

The amendment is adopted under Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor with the authority to adopt rules, regulations, and procedures as may be necessary.

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 October 5, 1989.

TRD-8910624
Rider Scott
Executive Director
Office of the Governor,
Criminal Justice
Division

Effective date: November 27, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 463-1788

• 1 TAC §3.843

The Criminal Justice Division of the Office of the Governor adopts an amendment to §3.843, without changes to the proposed text as published in the July 11, 1989, issue of the *Texas Register* (14 TexReg 50).

Under the federal Anti-Drug Abuse Act of 1986 and the Anti-Drug Abuse Act of 1988, the State of Texas is eligible to receive federal block grants for programs that provide enhanced drug law enforcement. The Criminal Justice Division (CJD) of the Office of the Governor has been designated as the agency responsible for administration of these funds.

Section 3.843 reflects Criminal Justice Division administrative policies, requirements, and operating procedures that apply to drug law enforcement projects which may receive funding under the Texas Narcotics Control Program. The sections were adopted May 19, 1988. The amendment is proposed in order to clarify rules regarding local match requirements for projects.

The amendment is adopted under Texas Civil Statutes, Article 4413(32a), §6(a)(11), which provides the Criminal Justice Division of the Office of the Governor with the authority to adopt rules, regulations and procedures as may be necessary.

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 October 5, 1989.

TRD-8910626 Rider Scott
Executive Director
Office of the Governor,
Criminal Justice
Division

Effective date: November 27, 1989

Proposal publication date: July 11, 1989

For further information, please call: (512) 463-1788

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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 §3.42

The Railroad Commission of Texas adopts an amendment to 16 TAC §3.42, with changes to the proposed text as published in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4194).

The result of adopting §3.42 will be to extend discovery status for oil wells drilled onshore to depth intervals deeper than 10,000 feet from 24 months to 36 months and to extend the discovery allowable for offshore wells from 18 months to 24 months for depth intervals up to 10,000 feet and to 36 months for depth intervals deeper than 10,000 feet. Also, the amendment will increase the daily well allowables. The amendment authorizes the commission to review the production history of discovery wells and adjust allowables if necessary to prevent waste or to protect correlative rights. The amended section will be applicable to oil wells currently producing on an oil discovery allowable basis and oil wells drilled after the effective date of the section which qualify for the discovery allowable. Wells which are currently operating under statewide rules or field rules and which are

eligible for the amended discovery allowable may have their discovery allowable reinstated by the commission upon written request of the operator(s).

The Railroad Commission has made three changes to §3.42 in response to comments received. The first change was to reword the phrase "drilled in a new field onshore or in a new oil producing reservoir onshore within the confines of an established field" in §3.42(b)(1) to "completed in an oil reservoir determined by the commission to be a new onshore oil field." The second change was to reword the phrase "drilled in a new field offshore or in a new oil producing reservoir offshore within the confines of an established field" in §3.42(b)(2) to "completed in an oil reservoir determined by the commission to be a new offshore oil field." Finally, §3.42(c) concerning subsurface pressure tests will not be deleted and the proposed §3.42(c) will become §3.42(d). The only other changes in §3.42 are editorial and non-substantive in nature.

One commenter suggested that wells eligible for the oil well discovery allowable should have their allowable based on field rules, the 1965 yardstick, or the discovery allowable depending on which method sets the highest allowable.

The amended section will be applicable to oil wells currently producing on an oil discovery allowable basis and oil wells drilled after the effective date of the section which qualify for the discovery allowable. Wells which are currently operating under statewide rules or field rules and which are eligible for the amended discovery allowable may have their discovery allowable reinstated by the commission upon written request of the operator(s).

One commenter suggested that the oil discovery allowable should be applicable to all wells currently producing on an oil discovery allowable basis.

The commission agrees with this comment and has added language to the adoption preamble to clarify that the amended oil discovery allowable will apply to all wells currently producing on an oil well discovery allowable basis.

Several commenters objected to the deletion of §3.42(c) which requires a bottom-hole pressure test.

The commission agrees with these comments and has decided to retain §3.42(c).

One commenter suggested clarification of §3.42(b)(1-2).

The commission agrees with this comment and has added the submitted language to §3.42(b)(1-2).

One commenter has requested an interpretation of the interplay between the oil well discovery allowable, the authority of the commission to regulate waste, and the authority of the commission to restrict oil production from new fields.

The commission has the authority under the conservation laws of Texas to prevent waste. The Texas Natural Resources Code, §85.048, limits the commission's power to restrict production from certain fields to prevent waste "under the provisions of paragraph (10), §85.046 of [the] code..." The statute expressly limits the restriction to waste as defined in §85.046(10) which provides for the commission's authority to prevent the "production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand." Section 85.048(b) states "the commission's authority to restrict production from a new field under other provisions of §85.046 of this code is not limited by this section." Therefore, the commission has the authority to restrict production from a new field under all other subsections of §85.046.

The following commenters expressed general support for the proposal: Arco Oil Company; Kerr-McGee Corporation; and Texas Mid-Continent Oil & Gas Association.

The following commenters expressed general support for the proposal, although they suggested changes to various provisions: Akin, Gump, Strauss, Hauer & Feld; Oryx Energy Company; Permian Basin Petroleum Association; and Texas Independent Producers & Royalty Owners Association.

The following commenter expressed disagreement with the proposal: Graves, Dougherty, Hearon & Moody.

The amendment is adopted under the Texas Natural Resources Code, §§81.052, 85.046, 85.202, 86.012, 86.041, 86.042, and 86.081, 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 Chapter 86 of the Natural Resources Code; and to conserve and prevent waste of oil.

§3.42. Oil Discovery Allowable.

(a) The discovery allowable rate for oil wells proven to be completed in a new and separate reservoir shall be determined from the following Discovery Allowable Schedule:

Scale of Allowables

Interval of Depth

Daily Well Allowable

	<u>Onshore</u>	<u>Offshore</u>
0 - 999	100 barrels	300 barrels
1,000 - 1,999	100 barrels	300 barrels
2,000 - 2,999	100 barrels	300 barrels
3,000 - 3,999	100 barrels	300 barrels
4,000 - 4,999	130 barrels	330 barrels
5,000 - 5,999	160 barrels	360 barrels
6,000 - 6,999	200 barrels	400 barrels
7,000 - 7,999	270 barrels	470 barrels
8,000 - 8,999	340 barrels	540 barrels
9,000 - 9,999	440 barrels	640 barrels
10,000 -10,499	510 barrels	710 barrels
10,500 -10,999	590 barrels	790 barrels
11,000 -11,499	670 barrels	870 barrels
11,500 -11,999	750 barrels	950 barrels
12,000 -12,499	830 barrels	1030 barrels
12,500 -12,999	910 barrels	1110 barrels
13,000 -13,499	1000 barrels	1200 barrels
13,500 -13,999	1100 barrels	1300 barrels
14,000 -14,499	1200 barrels	1400 barrels
14,500 -14,999	1360 barrels	1560 barrels
15,000 -15,499	1520 barrels	1720 barrels
15,500 -15,999	1760 barrels	1960 barrels

(b) Duration and exemption from market demand limitation.

(1) Onshore. Each oil well completed in an oil reservoir determined by the commission to be a new onshore oil field may receive, as a maximum daily allowable, its discovery allowable, exempt from market demand limitation, for a period of 24 months (36 months for depth intervals deeper than 10,000 feet) from the date of assignment of the oil allowable to such discovery well or until the eleventh oil well has been completed therein, whichever occurs first.

(2) Offshore. Each oil well completed in an oil reservoir determined by the commission to be a new offshore oil field may receive, as a maximum daily allowable, its discovery oil allowable, exempt from market demand limitation, for a period of 24 months (36 months for depth intervals deeper than 10,000 feet) from the date of assignment of the oil allowable to such discovery well or until the sixth oil well has been completed therein, whichever occurs first.

(c) A subsurface pressure test shall be made on the discovery well in accordance with the instructions on the commission's appropriate form, and the results thereof reported to the commission within 60 days after completion of the discovery well.

(d) The director or the director's delegate shall review the production performance of discovery wells to evaluate whether waste is occurring due to the discovery allowable. If the director or the director's delegate believes waste is or may be occurring, the director or the director's delegate may request any additional relevant information from the operator and may set the matter for hearing to allow the commission to determine if the discovery allowable should be lowered to prevent waste.

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 November 6, 1989.

TRD-8910713 Kent Hance
 Chairman
 Railroad Commission of
 Texas

Effective date: November 28, 1989

Proposal publication date: November 14, 1989

For further information, please call: (512) 463-7152



Chapter 5. Transportation Division

Subchapter B. Operating Certificates, Permits, and Licenses

• 16 TAC §5.33

The Railroad Commission of Texas adopts an amendment to §5.33, without changes to the proposed text as published in the August 8, 1989, issue of the *Texas Register* (14 TexReg 3865).

The amendment is adopted to allow contract carriers to serve more shippers under a single contract carrier permit. While the requirements for obtaining a permit will still protect the common carrier system, this amendment will allow contract carriers to meet the particular needs of a greater number of shippers.

The amendment will raise the current limit of five shippers for a single contract carrier. A contract carrier permit may now authorize service for up to 10 shippers.

Comments in favor of the proposal supported the amendment in order to allow contract carriers greater flexibility to meet specific shipper needs. Comments in opposition to the proposal argued that the higher limit would erase the distinction between common carriers and contract carriers.

Groups commenting in favor of the amendment were the Greater Dallas Chamber, the Texas Retailers Association, and the National Industrial Traffic League. Groups commenting in opposition to the proposal were the Oil Field Haulers Association, Inc., the Common Carrier Motor Freight Association, Inc., and the Texas Tank Truck Carriers Association, Inc.

The commission disagrees with the comments opposing the proposed amendment. The current strict requirements for obtaining authority under a contract carrier permit remain in place, and will continue to provide sufficient protection to the common carrier system. In particular, a finding must be made for each permit that the additional authority will not impair the efficient public service of the existing common carriers.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the Commission to regulate motor carriers and contract carriers in all matters.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910718 Kent Hance
 Chairman
 Railroad Commission of
 Texas

Effective date: November 28, 1989

Proposal publication date: August 8, 1989

For further information, please call: (512) 463-7094



Part IV. Texas Department of Licensing and Regulation

Chapter 75. Air Conditioning and Refrigeration Contractor License Law

• 16 TAC §§75.1-75.14

(Editor's Note: This adopted repeal for the Department of Licensing and Regulation was inadvertently omitted from the October 31, 1989, issue of the Texas Register, therefore, it is included in this issue. We apologize for any inconvenience this may have caused).

The Texas Department of Licensing and Regulation adopts the repeal of §§75.1-75.14, without changes to the proposed text as published in the May 26, 1989, issue of the *Texas Register* (14 TexReg 2533).

The agency determined a need for a standard numbering system, therefore, these sections are repealed in order to allow for renumbered, reorganized sections.

These sections are being replaced to allow for the adoption of edited, renumbered, and reorganized new sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 8861, which provide the Texas Department of Licensing and Regulation with the authority to promulgate rules and regulations necessary to effectuate the purpose of the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 24, 1989.

TRD-8910248 Larry E. Kosta
 Acting Executive Director
 Texas Department of
 Licensing and
 Regulation

Effective date: November 15, 1989

Proposal publication date: May 26, 1989

For further information, please call: (512) 463-3127

TITLE 22. EXAMINING BOARDS

Part VI. State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Registration

• 22 TAC §131.137, §131.138

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.137 and §131.138. Section 131.138 is adopted with changes to the proposed text

as published in the August 15, 1989, issue of the *Texas Register* (14 TexReg 4038). Section 131.137 is being adopted without changes and will not be published.

The amendment to §131.137 was necessary to establish the manner in which a consent order will be offered to a registrant as an expedient disposition of alleged infractions. Section 131.138(8) was amended to require that the engineer affix his seal on documents issued as completed for an intended purpose which should be specified prominently adjacent to the seal.

The amendment to §131.137 will provide clarification of the manner in which the consent order is used by the board as an informal disposition of censurable conduct by a registrant. The amendment to §131.138 will facilitate the issuance of sealed documents for such purposes as bidding and piece-meal permitting in a fast tract construction project, even before construction-ready documents are complete for issuance. In accordance with the Texas Engineering Practice Act, §15(c), public officials charged with enforce-

ment of laws, ordinances, and codes affecting the practice of engineering may only accept engineering documents prepared by registered engineers, as evidenced by the seal of the engineer.

No comments were received regarding adoption of the amendment to §131.137. Comments concerning the adoption of §131.138 were received from an attorney purportedly representing many large engineering, construction management, and construction services firms who took exception to the need for seals on engineering documents which are not issued for construction. He made extensive claims that such requirements were burdensome, making compliance more difficult, costly, and without furthering the goals or purposes of the Act. He argued that documents released only for bidding purposes need not be sealed to protect the public health, safety, and welfare, because such documents only affect the contractual relationship of the owner and contractor. Further, that sealed documents which are incomplete for construction might confuse and mislead the craft labor employed to construct facilities

if erroneously placed in their hands, with the seal outweighing any notation thereon that the documents are not for construction or are limited to some other purpose.

The board disagreed with the proffered arguments. It considered the claim that sealing documents not intended for construction was unnecessarily costly and burdensome to be exaggerated. The wording of §131.138(8) was modified to require delimitating notations to be affixed prominently adjacent to the seal.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8, which provides the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.138. Engineers' Seals. Seals of two different sizes will be acceptable, a pocket seal, the size commercially designated as 1 5/8-inch seal, or desk seal, commercially designated as a two-inch seal, to be of the design shown as follows:



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

(8) The registrant shall affix his seal, sign his name, and place the date of execution, only on engineering documents that have been issued by the registrant as completed for an intended purpose which should be specified prominently adjacent to the seal. Documents considered as incomplete by the registrant may be released temporarily for interim review and do not need to have the registrant's seal or signature affixed, but shall be dated; bear the responsible engineer's name, serial number, and "P.E."; designation; and be clearly labeled to indicate the documents are for interim review and not intended for construction, bidding, or permit purposes. The use of signature reproductions, such as rubber stamps, or computer generated or other facsimiles shall not be permitted in lieu of actual signatures.

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 November 6, 1989.

TRD-8910691

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: November 28, 1989

Proposal publication date: August 15, 1989

For further information, please call: (512) 440-7723

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Part XXXII. State
Committee of Examiners
for Speech-Language
Pathology and
Audiology

Chapter 741. Speech-Language
Pathologists and Audiologists

Subchapter I. License Renewal

The State Committee of Examiners for Speech-Language Pathology and Audiology adopts amendments to §§741.162, 741.163, 741.181, 741.193, 741.194, 741.198; and new 741.182 and 741.199. Sections 741.162, 741.163, 741.193, and 741.198 are adopted with changes to the proposed text as pub-

lished in the July 18, 1989, issue of the *Texas Register* (14 TexReg 3453-3457). A correction of error was published in the August 11, 1989, issue of the *Texas Register* (14 TexReg 5085) for the proposed text. Sections 741.181, 741.182, 741.194, and 741.199 are adopted without change and will not be republished.

The amendments will safeguard the public's health, safety, and welfare by the continuation of the established procedures and policies concerning the licensing and regulation of speech-language pathologists, audiologists, licensed associates in speech-language pathology, and licensed associates in audiology. The amendments reorganize and clarify the sections. Several editorial changes were made and are listed in the summary of comments.

The amendment to §741.162 clarifies penalties and continuing education requirements of all inactive licensees upon reactivation. The amendment to §741.163 revises the continuing education requirements regarding the effective date of the three-year roll-over option, allows all licensees to use coursework, and clarifies when hours earned during the birth month may be used. The amendment to §741.181 includes penalties required for reactivation of an inactive license in the schedule of fees and late renewal penalties. The amendment to §741.193 reorganizes and

clarifies the complaint procedures. The amendment to §741.194 reorganizes and clarifies procedures for denying, suspending, or revoking a license. The amendment to §741.198 updates formal hearing procedures. New §741.182 establishes time periods for processing applications and new §741.199 relates to surrender of license.

There was only one comment received regarding the adoption of the proposed amendments but several editorial changes were made as shown below.

Concerning §741.162, one commenter suggested that the penalty fee be waived in extreme circumstances if a licensee is not able to renew the license in a timely manner. The Committee considered this issue, but is bound by the statute to assess the penalty (Texas Civil Statutes, Article 4512j, §15(a)).

Several editorial changes were made to §741.162(a)(2), and (f)(2)(B)(ii)(I) and (II), to §741.163(8), to §741.193(e), and to §741.198(b) for the purpose of clarification.

There were no groups, associations, or government entities which commented on the proposed sections.

• 22 TAC §741.162, §741.163

The amendments are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.162. General.

(a) Each licensee is responsible for license renewal before the expiration date. The committee shall use the following system for license renewals.

(1) (No change.)

(2) Each licensee shall annually pay the nonrefundable fee for license renewal. A 60-day grace period shall be allowed for payment of the renewal fee. The executive secretary shall not consider a license to be renewed until the completed license renewal form, proof of earned continuing education, and the renewal fee have been mailed to the committee office. The postmarked date is the date of mailing. After expiration of the grace period, the committee may renew each license in accordance with subsection (f) of this section.

(b) Renewal of a license is contingent on the applicant meeting uniform continuing education requirements established by the committee; however, continuing education hours are not required for the first renewal. After a license is renewed for the first time, the licensee must begin earning approved continuing education hours.

(c)-(e) (No change.)

(f) Inactive status is defined as the two-year period of time between date of expiration of license and deletion of licensee's record. An inactive licensee may not

practice or represent himself or herself as a speech-language pathologist or audiologist.

(1) Requests. A licensee may submit, prior to expiration of the 60-day grace period, a written request for inactive status to the committee office specifying the reason for the request. Failure to earn continuing education hours is not an acceptable reason.

(2) Penalties upon renewal.

(A) If a licensee wishes to reactivate the license at the end of the first or the second year of inactive status, the licensee:

(i) must request reactivation in writing prior to the end of the first or second year of inactive status;

(ii) must pay a penalty fee as follows:

(I) if inactive status was requested under paragraph (1) of this subsection, the penalty fee is equal to all accrued renewal fees; or

(II) if inactive status was not requested under paragraph (1) of this subsection, the late renewal penalty fee is equal to \$15 per month following the 60-day grace period plus all accrued renewal fees; and

(iii) must furnish proof of having earned, during the inactive period, 10 continuing education hours. Dual licensees must submit proof of having earned 15 hours of continuing education. Proof is to be furnished at the time of reactivation. A person who has accrued sufficient continuing education hours under §741.163(5) of this title (relating to Requirements for Continuing Professional Education) for renewal shall be deemed to have met this requirement.

(B) If a licensee needs to reactivate the license at a time different from the first or second year renewal date, a request for reactivation must be made to the committee stating the reason for reactivation. Following review, the executive secretary will inform the licensee of the decision, and if granted, the licensee:

(i) must pay a late renewal penalty fee equal to \$15 per month following the 60-day grace period plus all accrued renewal fees; and

(ii) must meet the following requirements:

(I) if reactivated before the end of the first year, no additional continuing education hours need to be earned if the licensee had completed continuing education hours prior to expiration of the license and could have renewed the license;

(II) if reactivated before the end of the first year and if the licensee had not earned sufficient continuing education hours prior to expiration of the license and could not have renewed the license, the licensee must earn sufficient continuing education hours, during the inactive period, for the renewal of the license as required by this chapter. The hours must be earned before reactivation will be granted. A person who has accrued sufficient continuing education hours under §741.163(5) of this title (relating to Requirements for Continuing Professional Education) for renewal shall be deemed to have met this requirement; or

(III) if reactivated after the end of the first year but before the end of the second year, the licensee must furnish proof of having earned, during the inactive period, 10 continuing education hours. Dual licensees must submit proof of having earned 15 hours of continuing education. Proof is to be furnished prior to or at the time of reactivation. A person who has accrued sufficient continuing education hours under §741.163(5) of this title (relating to Requirements for Continuing Professional Education) for renewal shall be deemed to have met this requirement.

(3) Deleted license following inactive status. A license that is not reactivated within the two year period after expiration may not be renewed, and the license may not be restored, reissued, or reinstated thereafter, but that person may reapply for and obtain a new license if requirements of the Act are met.

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

§741.163. Requirements for Continuing Professional Education. Continuing professional education requirements must be met for renewal of license.

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

(5) Earned continuing education hours exceeding the minimum requirements in a previous renewal period shall first be applied to the continuing education requirements for the current renewal period. A maximum of 20 additional clock hours may be accrued during a license period to be applied to the next two consecutive renewal periods; provided, however, a maximum of 30 additional clock hours may be accrued for dual licenses during a license period to be applied to the next two consecutive renewal periods. This paragraph shall become operational June 1, 1990.

(6) If a licensee successfully completes coursework from an accredited college or university in basic/professional/related areas, that coursework may be accepted for continuing education credit for state license renewal if the licensee submits an original transcript of that work and com-

pletes a statement that this was a continuing education experience. Ten continuing education hours or one continuing education unit equals one semester of coursework.

(7) (No change.)

(8) The continuing education requirement will begin upon first renewal. Each subsequent renewal will require documentation of the continuing education experiences.

(9) A continuing education experience occurring during the renewal month for licensure will be counted as continuing education hours earned for current license renewal or for a subsequent year's renewal under paragraph (5) of this section.

(10)-(12) (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 November 6, 1989.

TRD-8910630

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

Effective date: November 27, 1989.

Proposal publication date: July 18, 1989.

For further information, please call: (512) 458-7502

Subchapter J. Fees and Late Renewal Penalties.

• 22 TAC §741.181, §741.182

The amendment and new section are adopted under Texas Civil Statutes, Article 4512j, §5, which provide the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure 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 November 6, 1989.

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

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For further information, please call: (512) 458-7502

Subchapter K. Denial, Suspension, or Revocation of Licensure

• 22 TAC §§741.193, 741.194,
741.198, 741.199

The amendments and new section are adopted under Texas Civil Statutes, Article 4512j, §5, which provides the State Committee of Examiners for Speech-Language Pathology and Audiology, subject to the approval of the Texas Board of Health, with the authority to adopt rules to implement the Speech-Language Pathology and Audiology Licensure Act.

§741.193. Complaint Procedures.

(a) An individual wishing to report a complaint against or alleged violation of the Act or these rules by a licensee or other person shall notify the executive secretary, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 458-7502. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the committee office.

(b) Upon receipt of a complaint, the executive secretary may send to the complainant an official form which the complainant should complete and return to the committee office.

(c) Upon receipt of a complaint, the executive secretary shall notify the alleged violator of the complaint and request a written response within 45 days.

(d) The executive secretary shall collect all information related to the complaint. The chair shall appoint a subcommittee to review the complaint and the supporting documentation to determine if there is sufficient evidence to request further investigation.

(e) The subcommittee may request further investigation of the complaint. After investigation has been completed, the person completing the investigation shall submit his or her findings to the subcommittee and the executive secretary. The written investigative report shall set out all facts obtained during the investigation.

(f) If the subcommittee determines that there are insufficient grounds to support or act upon the complaint, the subcommittee may dismiss the complaint and give written notice of the dismissal to the complainant and the licensee or person against whom the complaint has been filed.

(g) If the subcommittee determines that there are sufficient grounds to support the complaint, the subcommittee may recommend to the committee that the license be denied, suspended or revoked, or that other appropriate action as authorized by law be taken.

§741.198. Formal Hearings.

(a) The committee adopts by reference the Texas Department of Health's for-

mal hearing procedures, 25 TAC §§1.21-1.34 with the following exceptions:

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

(b) A formal hearing shall be held in Austin; however, upon motion of either party, the hearing examiner, or the committee and for good cause, the hearing may be held in another location.

(c) An appeal from the denial, suspension, or revocation of a license is governed by the Act, §19.

(d) Copies of the formal hearing procedures are indexed and filed in the executive secretary's office, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-8910632

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

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For further information, please call: (512) 458-7502

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Board of Health

Procedures and Policies

• 25 TAC §1.7

The Texas Department of Health adopts an amendment to §1.7, without change to the proposed text as published in the August 22, 1989, issue of the *Texas Register* (14 TexReg 4205). The amendment implements the provisions of House Bill 1506, 71st Legislature, 1989, that a member of a governing body of a state agency be allowed to dissent against any action taken by the body during a meeting and to have the dissent reflected in the official minutes of the body.

No comments were received regarding adoption of the amendment.

The amendment is adopted under House Bill 1506, 71st Legislature, 1989, which authorizes a member of a governing body of a state agency to dissent against any action taken by the body during a meeting and to enter a written statement in the official minutes of the body to reflect the dissent; and Health and Safety Code, §12.001, which provides the Board of Health with the authority to adopt rules for its procedures.

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 November 6, 1989.

TRD-8910629 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: November 27, 1989.

Proposal publication date: August 22, 1989.

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

Chapter 97. Communicable Diseases

Control of Communicable Diseases

• 25 TAC §97.14

The Texas Department of Health adopts new §97.14, without change to the proposed text as published in the August 22, 1989 issue, of the *Texas Register* (14 TexReg 4206). The new section implements the requirement of House Bill 2608, 71st Legislature, 1989, that the department by rule establish a fee to cover the cost of providing written notice of a positive HIV-related test result to an applicant for insurance.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Insurance Code, Article 21.21-4 (House Bill 2608, 71st Legislature, 1989), which provides the Department with authority to adopt by rule a fee to cover the cost of providing written notice of a positive HIV-related test result to an applicant for insurance; and Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the Commissioner of Health.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910628 Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: November 27, 1989.

Proposal publication date: August 22, 1989.

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

Chapter 301. Wastewater Surveillance and Technology

Construction Standards for On- Site Sewerage Facilities

• 25 TAC §§301.11-301.15, 301.17

The Texas Department of Health adopts amendments to §§301.11-301.15, and

§301.17, with changes to the proposed text as published in the May 5, 1989, issue of the *Texas Register* (14 TexReg 2113).

The amendments update, clarify, and modify the construction standards for on-site sewerage facilities.

The amendments will result in a reduced exposure to disease-causing agents, increased aesthetics of habitation, less lost wages and time due to illness, and less medical bills.

The following is a discussion of the public comments received and evaluated by department staff during the comment period.

Concerning §301.11, general procedures and information, the following comments were received.

Several commenters suggested a clarification on what surface discharges are allowed by the department and which are allowed by the Texas Water Commission. The department agrees and has added language to distinguish surface irrigation from point discharges to water courses as permitted by the Texas Water Commission.

A commenter suggested that the definition of a holding tank include a reference to a high-level alarm. The department agrees and has included the suggested reference in the holding tank definition.

One commenter suggested that a prohibited cesspool not be required to be covered. The department does not agree and is of the opinion that these units may pose a health and safety hazard. The definition will remain as written.

A comment was received suggesting that the current definition of a single-family residence may allow multi-family dwellings. The department agrees and the definition now restricts these residences to one family.

A commenter suggested grandfathering smaller lots in pre-1988 subdivisions that were not filed with the county clerk but were entered in the tax rolls. The department agrees by exempting from the minimum lot size requirement subdivisions recorded in deed, or tax records.

A comment was received suggesting a relaxation of the 150-foot buffer around a potable water well in certain types of clay soils. The department feels this suggestion should be brought up before the Texas Water Well Drillers Board for possible rule modifications by that agency.

One commenter objected to the requirement that a registered professional engineer or registered professional sanitarian certify in writing the system that he or she designed. The department does not agree in that design professionals already have an obligation to their clients in assuring proper system construction.

Concerning §301.12, design standards for sewerage systems, the following comments were received.

A comment was received suggesting that, in a three-tank series, all three septic tanks should have one-third of the total volume. The department disagrees and maintains that the first tank should have one-half the total volume with the other two tanks having one-fourth volume each.

Another comment suggested that the inlet device of the second septic tank in a two-tank series may be at or below the outlet flowline of the first tank. The department agrees and modifications have been made accordingly.

A comment was received requesting a clarification on the minimum liquid depth in all septic tanks. The department has included a 30-inch minimum liquid depth requirement.

A commenter suggested that the direction of flow into and out of a septic tank be clearly indicated by the words "inlet" and "outlet." The department feels arrows are easier to understand. However, placement of the arrows may be a problem. The standards have been modified to allow either technique.

A commenter suggested removing the requirement for a 24-hour watertightness test for septic tanks, and making the test an option. The department disagrees and maintains that septic tank structural integrity and tank reliability are essential for the success of an on-site system. The requirement remains as proposed.

A comment was received suggesting that the maximum volume of the first septic tank or compartment not be limited to 67%. The department disagrees and supports the ad hoc committee in setting the volume limit at 67% which is used in many other states. Until research data can indicate differently, the standards will remain as written.

One commenter suggested sizing institutional septic tanks using influent biochemical oxygen demand (BOD) loading as a basis instead of requiring a total of three-days' storage volume in septic tanks. The department disagrees and feels that three days of storage is more than adequate unless research data proves otherwise. Adequate septic tank performance with high influent BOD concentrations can be assured by pumping out septic tanks on a frequent basis.

A comment was received suggesting that septic tanks be tested for watertightness just prior to final back-filling. The department agrees and has made modifications accordingly.

A commenter suggested having the "alarm on" level at or below the "second pump on" level in a pump tank system. The department agrees with the suggestion and has made the appropriate modifications.

One comment received suggested that the standards clarify that septic tanks are sized in terms of liquid volume and that aerobic treatment plants are sized in terms of sewage treatment capacity in gallons per day. The department agrees and has made appropriate changes.

In regard to grease traps and interceptors, a comment was received suggesting that if a garbage grinder in an institutional kitchen is used, the grease trap must be appropriately sized. Another comment suggested allowing the use of under-sink grease traps. The department agrees with both comments and has made the necessary modifications.

Concerning §301.13, design standards for effluent disposal systems, the following comments were received.

A comment was received suggesting that butcher paper be allowed as a media barrier

over gravel in absorption beds where sand is backfilled over the gravel layer. The department disagrees and concurs with ad hoc committee opinion against the use of butcher paper or newspaper as a media barrier.

A comment was received requesting clarification on when percolation tests are not needed. The department has included verbiage specifying which systems do not require percolation tests.

A comment was received suggesting that a registered professional sanitarian or a registered professional engineer be responsible for the design of a lined evapotranspiration (ET) system built in fill dirt. The department agrees and has made the appropriate revisions.

A commenter suggested that ET beds be constructed such that at least 20 inches of elevation difference be maintained between the bottom of the outlet pipe of the treatment tank and the bottom of the bed. The commenter also suggested prohibiting the penetration of the liner by the effluent pipe. The department agrees with the comments; however, feels that these suggestions should be presented to the ad hoc committee for their consideration for future revisions.

Concerning §301.14, disposal alternatives/special applications, the following comments were received.

A commenter suggested including a guide for designing on-site blackwater/ greywater systems. The department is in the process of drafting rules on these systems and will present the rules to the ad hoc committee when it convenes.

A comment was received suggesting that composting toilets not bearing the NSF seal be considered acceptable to the department after we have evaluated the design and performance of the unit. The department agrees and has made the appropriate changes.

Concerning §301.17, tables and figures, the following comments were received.

A comment was received suggesting a reference to the department's rules and regulations for public water systems, 25 TAC §337.204(d)(1)(c) (concerning water sources), regarding the required restricted zone around water supply lakes which excludes the installation of on-site disposal systems. The department agrees and has made the necessary modifications on Table I.

A comment was received which suggested that Table I include required separation distances to sewage holding tanks. The department agrees and has made the appropriate changes.

A commenter suggested that salt water bodies be included in Table I in the category of streams, ponds, and lakes. The department agrees and has made the necessary changes.

A commenter suggested revising the wording of the distance requirement for greywater systems in Table I to read "a minimum of 25 feet from the slope face". The department agrees and has made the necessary modifications.

A commenter suggested that throughout Table V all references to clearances "below ground surface" be changed to "below the

bottom of the disposal system". The department agrees and has made the appropriate modifications.

A comment was received in regard to Table V which suggested that soil percolation rates of one to five min./in. should be considered provisionally suitable provided an engineer or sanitarian demonstrates that no nuisance or health hazard will be created by an absorption system in these soils. The standards, at present, contain language which allows the department to consider requests for variances or exemptions of any part of the standards. Therefore, the department does not see a need for additional language in this regard.

A commenter suggested that clarification be included in Table VI which explains what normal water consumption is. The department agrees and has made the necessary modifications.

A comment was received suggesting that language be added to Table VI requiring the addition of a bedroom to the number of bedrooms in a home for each 800 square feet or any fraction thereof over 1,900 square feet of living area. The department disagrees because the minimum sizing requirements specified in Table VI are already conservative.

A comment was received which indicated that some of the evaporation and rainfall values in Table VII were incorrect. The department agrees and has made the necessary corrections.

In addition to the public comments, the Texas Board of Health in its November 5, 1989 meeting made the following changes. Section 301.12(a)(4)(F) is revised to require pump tanks to have a minimum excess volume equivalent to 10 minutes at average daily flow; and §301.12(c)(10) is revised to suggest quarterly inspections of aerobic units and the pumping out of excess solids when the quarterly inspections indicate the need.

Minor editorial changes were made throughout the final sections for purposes of consistency, language clarity, and intent.

The following agencies, organizations, and groups commented on the sections: Lower Colorado River Authority, Brazos River Authority, City of Austin, Austin-Travis County Health Department, County of Bexar, County of Harris, United States Department of the Army, Composting Toilet Systems, Clearstream Wastewater Systems, Incorporated, County of Burnet, Calhoun County Health Department, Hancor, Incorporated, Texas Department of Health—Public Health Region 7, Texas Department of Health—Public Health Region 1. None of the commenters were opposed to the sections in their entirety; however, commenters expressed concerns, offered suggestions, made comments, and raised questions concerning specific provisions as outlined in the summary of comments.

The amendments are adopted under Texas Civil Statutes, Article 4477-1, §23, which provide the Texas Board of Health with the authority to adopt rules covering on-site sewerage facilities; 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 im-

posed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health.

§301.11. General Procedures and Information.

(a) Purpose. It is the policy of the Texas Department of Health that individual on-site sewerage facilities shall be designed, constructed, and operated to provide adequate sewage treatment and disposal that will not contaminate potable water supplies or threaten the health and welfare of the public. Therefore, the primary purpose of these standards is to establish minimally-acceptable standards for constructing on-site sewerage facilities. These construction standards will cover the aspects of on-site sewerage systems for use by individual homes, small business establishments, recreational areas, institutions, and other activities that conform to these sections and do not have access to a central collection system. On-site surface irrigation of treated wastewater is allowed in accordance with department policy. The various types of treatment processes covered by these standards do not have any open point discharges to the surface of the ground. Any process which proposes open point discharge should be designed in accordance with the requirements of the Texas Water Commission in 31 Texas Administrative Code, Chapter 317 (relating to the Design Criteria for Sewerage Systems) and must be operated under a waste discharge permit issued by the Texas Water Commission. For single or collective daily flows over 5,000 gallons per day that are proposed for on-site disposal, the determination of the necessity for a waste discharge permit must be obtained from the Texas Water Commission.

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

(1) (No change.)

(2) Alternate system—An on-site sewage disposal system utilizing evapotranspiration beds, pressure dosing, a mound, gravelless drainfield piping, composting toilets, sewage recycling, or items approved through departmental policy.

(3) Anaerobic digestion—The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

(4) Bedrock—A continuous horizontal layer of hardened mineral deposits that does not support growth of common plant life.

(5) Blackwater—All sewage other than greywater that contains sufficient human or animal wastes to require the water to be treated prior to disposal to the earth's subsurface.

(6) Bore hole—A drilled hole four feet or greater in depth and one to three feet in diameter (see §301.16 of this title (relating to Unsatisfactory On-Site Disposal Systems)).

(7) Caliche—A white or pale yellow deposit of carbonate and/or sulfates of varying hardness that exists in the soil profile.

(8) Cesspool—A non-watertight, covered receptacle intended for the receipt and partial treatment of domestic sewage. This device is constructed such that its side-walls and bottom are open jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition (see §301.16 of this title (relating to Unsatisfactory On-Site Disposal Systems)).

(9) Chemical—A liquid or powdered waste that in sufficient quantity could have a biotoxic effect on on-site sewerage facilities.

(10) Chemical toilet—A portable toilet using chemicals to mask odors, discourage insect breeding, and provide partial disinfection.

(11) Collective system—An on-site sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units where the total combined flow from all units does not exceed 5,000 gallons per day.

(12) Commission—Texas Water Commission.

(13) Composting toilet—A self-contained disposal facility designed to decompose non-waterborne human wastes through bacterial action facilitated by aeration.

(14) Department—Texas Department of Health.

(15) Evapotranspiration system—A subsurface sewage disposal system which relies on soil capillarity and plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

(16) Figure—Any reference in these sections to a figure # is a reference to a figure shown in §301.17 of this title (relating to Tables and Figures).

(17) Geotextile filter fabric—A non-woven fabric suitable for wastewater applications. The fabric filament bonding must be waterproof in accordance with the physical description in §301.13(c)(6)(B) of this title (relating to Design Standards for Effluent Disposal Systems).

(18) Gravelless drainfield pipe—A generically labeled large diameter (usually eight or 10 inches) geotextile fabric-wrapped piping product which is intended for use without gravel in a subsurface sewage disposal system.

(19) Greywater—Wastewater from clothes washing machines, showers,

bathtubs, handwashing lavatories, and sinks that are not used for food preparation or disposal of chemical and biological ingredients.

(20) Holding tank—A watertight container equipped with a high-level alarm used to receive and store sewage in an anaerobic environment pending its delivery to, and treatment at, an approved treatment facility. This type of facility is generally intended for interim use, if and when approved by the local permitting authority.

(21) Individual—A person, group of persons, corporation, or entity permitted to own, or use real estate.

(22) Injection well—A hole drilled into permeable soil which is intended to receive either raw sewage or the effluent from some form of treatment process. (see §301.16 of this title (relating to Unsatisfactory On-Site Disposal Systems)).

(23) Innovative design—Detailed drawings and specifications describing the construction of on-site sewerage facilities that utilize materials and concepts not entirely included in these standards.

(24) Licensing authority—The governmental entity having legal authority over construction, operation, enforcement, and maintenance of on-site sewage disposal systems.

(25) Mobile home park—Any facility or area developed for lease or rental of space for the placement of two or more mobile homes.

(26) Mound system—A soil absorption system which is installed in or below an artificially created mound of earth.

(27) Natural soil—Earthen materials deposited into place by natural processes and not disturbed by artificial processes.

(28) On-site aerobic treatment unit—A watertight covered receptacle designed to receive, store, and provide treatment to domestic sewage received through a building sewer. Its function is to separate solids from the liquid, promote the aerobic digestion of organic matter through the use of a forced air supply, store, and aerobically digest settleable solids, and allow the clarified liquid to be disposed of in an approved manner as stated in §301.13 of this title (relating to Design Standards for Effluent Disposal Systems) and §301.14 of this title (relating to Disposal Alternatives/Special Applications).

(29) On-site sewerage facilities—Septic tanks, pit privies, cesspools, sewage holding tanks, injection wells used to dispose of sewage, chemical toilets, treatment tanks, and all other facilities, systems, and methods used for the disposal of sewage other than the disposal systems operated under a permit issued by the Texas Water Commission.

(30) Owner—Holder of the warranty deed and/or the responsible occupant of the property served by an on-site sewage disposal facility.

(31) Pit privy—A vented vault intended to store human wastes and allow its decomposition through natural processes. In this type of treatment, no external water source is provided and there is no direct discharge to the surface. It is recommended for use only in primitive and remote areas.

(32) Platted—Recorded with the county in an official plat record.

(33) Portable toilet—A small portable enclosure with a built-in toilet seat and a raw sewage holding tank. It is primarily intended for use at construction sites and other areas where temporary restroom facilities are required. Domestic sewage collected in these facilities is generally retained in an anaerobic state pending delivery to, and treatment at, an approved treatment facility.

(34) Pressure dosing—The use of some form of pumping device and a network of small diameter piping to distribute treated effluent within a subsurface sewage disposal area.

(35) Sanitary control easement—A document securing all land, within 150 feet of a public or private potable water well location, from pollution hazards that include, but are not limited to, solid and liquid waste disposal sites, animal pens, improperly sealed or abandoned wells, major sewage pumping and treatment plants, and drainage ditches which contain industrial waste discharges.

(36) Scum—A mass of organic and/or inorganic matter which floats on the surface of sewage.

(37) Seepage pit—An unlined covered excavation in the ground which is designed to operate in essentially the same manner as a cesspool (see §301.16(c) of this title (relating to Unsatisfactory On-Site Disposal Systems)).

(38) Septic tank—A watertight covered receptacle designed to receive, store, and provide treatment to domestic sewage received from a building sewer. Its function is to separate solids from the liquid, digest organic matter under anaerobic conditions, store the digested solids through a period of detention, and allow the clarified liquid to be disposed of in an approved subsurface disposal system.

(39) Sewage—Water which contains, or which has been in contact with, organic and inorganic contaminants such as human or animal wastes, vegetable matter, cooking fats and greases, laundry and dishwashing detergents, and other chemical compounds and waste products.

(40) Sewage disposal plan—A thorough, technical report prepared by a registered professional engineer or regis-

tered professional sanitarian, either having demonstrated expertise in sewage disposal planning. The plan describes the circumstances involved with sewage disposal on a land tract that has been or is proposed to be, subdivided into lots of less than 10 acres.

(41) Single family dwelling—A habitable structure constructed on, or brought to its site, and occupied by members of one family.

(42) Sludge—A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(43) Soil—The unconsolidated mineral material on the surface of the earth that serves as a natural medium for the growth of plants.

(44) Soil absorption system—A subsurface sewage disposal system which relies on the soil's ability to absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(45) Split system—A wastewater disposal system that treats and disposes of blackwater and greywater separately.

(46) Subsurface sewage disposal system—A network of perforated piping installed below ground level which is used to distribute pretreated sewage effluent over a given disposal area.

(47) Table—Any reference in these sections to a table # is a reference to a table shown in §301.17 of this title (relating to Figures and Tables).

(48) Ultra low-flow toilets—Toilets that use 1 1/2 gallons or less per flush.

(49) Uniform gravel size—A gravel to be used in conventional absorption trench or bed installations that has been processed through shaker screens to produce a size passing one size screen and retained on another which is no more than 5/8" smaller than the first screen (example: passing 1" screen openings but retained on 1/2" screen openings)

(c)-(e) (No change.)

(f) Design approvals of on-site sewerage systems.

(1) (No change.)

(2) Approval of innovative designs. Agencies vested with the responsibility of enforcing on-site sewage disposal regulations may consider feasible innovative designs which are not specifically covered in these construction standards. Texas is a large state with many different types of topographical, geological, and climatic conditions. New systems may be conceived in the future to meet requirements demanded by these conditions. The systems may differ from the specific construction methods outlined in this publication. To both assist local regulatory agencies in determining the reli-

ability of a new system and protect the public from improperly designed systems, the department will review and evaluate new systems on an individual basis. A system found to be designed in accordance with good engineering practice will be approved by the department for the one installation for which the design was intended. Subsequent similar designs for other installations will be reviewed by the local regulatory authority. All new and innovative designs must be submitted through a local regulatory authority to the department for review as a clearing house procedure. At the department's discretion, local regulatory authorities having qualified technical expertise will be assigned authority to review each design and administer a program to evaluate the design's in-place performance. A 12-month trial operational period shall be required prior to any final approval by the department of any innovative design.

(A) Innovative systems. Submissions of innovative systems for review must include:

(i) detailed plans sealed, dated, and signed by a registered professional engineer or signed and dated by a registered professional sanitarian;

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

(B) Expenses. No expense in connection with research, pilot projects, and/or demonstration projects shall be borne by the department. Local agencies may elect to participate in these activities.

(3) (No change.)

(4) Residential lot sizing.

(A) (No change.)

(B) Platted or unplatted subdivisions served by a public water supply. Subdivisions of single family residences platted or designed after January 1, 1988, and served by a public water supply but utilizing individual subsurface methods for sewage disposal, shall provide for individual lots having surface areas of at least 1/2 acre, or shall have a site-specific design by a registered professional engineer or registered professional sanitarian and approved by the department or its designee. In no instance, shall the area available for such system be less than two times the design area. The surface area must be free of restrictions indicated in Table I and those referred to throughout this publication.

(C) Platted or unplatted subdivisions served by individual water systems. In subdivisions platted or designed after January 1, 1988, for single family residences where each lot maintains an individual water supply well and sewerage system with a subsurface soil system, the plat

shall show the approved well location and a sanitary control easement around the well within a 150-foot radius in which no subsurface sewerage system may be constructed. A watertight sewerage unit or lined evapotranspiration bed with leak detection capability may be placed closer to the water well than 150 feet, provided the minimum separation stated in Table I is not violated. To minimize the possibility of the transmission of waterborne diseases due to the pollution of the water supplied for domestic use, each lot in a platted subdivision shall contain no less area than one acre, or shall have a site-specific design by a registered professional engineer or a registered professional sanitarian and approved by the department or its designee. In no instance shall the area available for such systems be less than two times the design area. The surface area must be free of restrictions indicated in Table I and those referred to throughout this publication.

(D) Smaller lots or tracts.

The construction or installation of an on-site sewerage facility on a lot or tract that is smaller than the size required in subparagraphs (B) and (C) of this paragraph shall not be allowed. However, on such smaller lots or tracts, designed or recorded with a county in its official plat record, deed, or tax records prior to January 1, 1988, an on-site sewerage facility may be permitted to be constructed and licensed to operate if it meets the following criteria. It must be demonstrated through a thorough investigation by a registered professional engineer, a registered professional sanitarian (either having demonstrated expertise in on-site sewerage system design), or by a designated representative of the licensing authority that an on-site sewerage facility on one of these lots can be operated without causing a threat or harm to an existing or proposed water supply system or to the public health, or creating the threat of pollution or nuisance conditions. Regardless of lot size utilized for an on-site sewerage facilities, all other requirements contained in these sections still apply.

(5) Mobile home parks and multi-use residential developments served by a central sewerage system. Mobile home parks and multi-use residential developments which are owned or controlled by an individual and which rents or leases space, or mobile home parks and multi-use residential developments which are sold but ownership and control of a central water system and/or a central sewerage system are vested in a responsible entity, may utilize smaller lots than stated in paragraph (4)(B) of this subsection, provided an overall sewerage plan is submitted to the department or its agent and approved, and water is supplied by a central water system. Parks and developments of this type may connect no more than 20 units to a single sewerage system, provided the system is designed by a registered professional engineer or regis-

tered professional sanitarian. The total anticipated sewage discharge shall not exceed 5,000 gallons per day from the connected homes and the sewerage facility must conform to the definition of on-site sewerage facilities in subsection (b)(29) of this section. Individual home sites must meet the requirements in paragraph (4) of this subsection unless applicable under this section.

(6) Exemptions and variances. Requests for exemptions or variances of any part or parts of these standards for the design, installation, or operation of any on-site sewerage system shall be considered on an individual basis. The burden of proof is the responsibility of the registered professional engineer or registered professional sanitarian responsible for the design or installation of the system under consideration. This individual must demonstrate to the satisfaction of the department or permitting authority, that the exemption or variance has been requested because conditions are such that equivalent protection of the public health and environment can be provided by alternate means or construction features. Any such request must be accompanied by sufficient engineering or applicable data to meet the department's or permitting authority's satisfaction. The department shall, at the request of local authorities, provide evaluation and comment services for any such local authority. A registered professional engineer or a registered professional sanitarian shall certify in writing that the system he or she designed is constructed in accordance with the plans approved by the department or the local authority.

§301.12. Design Standards for Sewerage Systems.

(a) Septic tank design—residential.

(1) House sewer. The sewer from the house plumbing system to the septic tank shall be constructed of structurally sound pipe such as cast iron, ductile iron, or ASTM D 3034, polyvinyl chloride SDR 35 or stronger pipe with optional metallic locating tape, bedded in sand. Cast iron, ductile iron, Schedule 40 PVC, or high strength pipe should always be used under driveways. The pipe from the house to the septic tank shall have a minimum inside diameter of not less than three inches and be compatible with the house stub out pipe. The slope of the house sewer shall be no less than 1/4-inch fall per foot of pipe. The stub out location shall be at the highest possible elevation with respect to the house foundation to avoid deep treatment systems. The line must be of watertight construction. A cleanout plug must be provided within three feet of the building and at changes in alignment, both horizontal and vertical, and at every 50 feet of straight horizontal piping. Prospective installers and users of low flush commodes should consult with the manufacturers of these devices regarding their grade requirements. Too steep or too shallow slopes on pipes connecting the toi-

let and the treatment tank may require excessive maintenance. Piping from the treatment tankage to the disposal area must have at least two inches inside diameter, have at least a minimum fall of 1/8-inch per foot and be as sturdy as ASTM 3034, SDR 35 PVC piping. Metallic locating tape can be used at the discretion of the local authority with the installation of all piping to and within the disposal area. This tape, if utilized, must be readily detectable with a metal detector.

(2) (No change.)

(3) Inlet and outlet devices. To assure rapid drainage of house plumbing, the flow line of the inlet pipe shall be at least three inches higher than the operating tank liquid level which is determined by the flow line of the outlet pipe. Liquid penetration of the inlet device shall be at least six inches, but never greater than that of the outlet device. Liquid penetration of the outlet device shall be approximately one-fourth to one-half of the tank's liquid depth. T branches are required for inlet and outlet devices because they provide a means for venting the gases produced by the decomposition process from the tank and absorption system through the house plumbing. Otherwise, gases may escape from around the lid of the tank and cause an odor nuisance in the vicinity of the septic tank. T branches also offer ready access for required maintenance. To prevent the escape of floating solids from the tank to the subsurface disposal field and the possibility of inlet stoppages, the open spaces between the tops of the inlet and outlet devices and the underside of the tank cover shall be visible separations not larger than one inch (see Figure 1). In order to provide a good watertight septic tank, the inlet and outlet T branches shall be installed in a permanent manner at the time the septic tank is constructed. Prefabricated tanks shall have the T branches grouted in place before delivery to the job site so that the only connections to the tank at the point of installation will be the influent and effluent lines. Manufacturers of prefabricated tanks shall be allowed to install watertight flanges into the tank walls, into which inlet and outlet stubs can be easily fitted by field installers, causing watertight connections.

(4) Details of septic tank design.

(A) Two single compartment tanks in series, or a two-compartment tank, with approximately one-half to two-thirds of the total volume in the first compartment, will be required for acceptable solids removal. Minimum liquid depth shall be 30 inches. For flows greater than 500 gallons per day, three single compartment tanks may be used in series. The first compartment shall have one-half of the total volume and the other half divided equally between the other compartments. Tanks may be round, rectangular, or of a shape that allows the department's standards to be met. The

second compartment shall have inlet and outlet devices designed the same as for a single-compartment tank, except that the elevation, or flow-line, of the inlet device in the second unit of a two-compartment tank shall be at least three inches lower than the inlet device in the first unit. The intermediate T branch can, alternatively, be in a submerged horizontal position (see Figure 1). The liquid level in the second tank of a two-tank system must be the same or lower than the liquid level in the first tank. A 10-inch minimum diameter or square port shall be provided over the inlet and outlet T branches to each flow line device for inspection, cleaning, and maintenance. Both the inlet and outlet devices shall be accessible for inspection and maintenance without having to enter the septic tank. For tanks not having more than 12 inches of earthen cover, the use of sectional slab covers will conveniently and safely provide the needed access. For tanks buried more than 12 inches, manholes with risers are required. The septic tank shall be of sturdy, watertight construction. Materials used may be steel-reinforced poured-in-place concrete, steel-reinforced pre-cast concrete, fiberglass reinforced plastic polyethylene, or other materials approved by the licensing authority. Metal septic tanks are prohibited because they are subject to corrosion. The septic tank shall be structurally designed to resist buckling from external hydraulic loading and exterior loading caused by earth fill, garden tractors, riding lawn mowers, or any expected maximum wheel weights. All tanks shall be tested by filling with fresh or construction grade water following installation prior to final backfilling and checked 24 hours later for leaks and structural integrity. At the discretion of the regulating authority, a dye test, or any other test for watertightness that is acceptable to the department, shall be performed on septic tanks to be installed in areas with high groundwater tables. Tanks exhibiting obvious deflections, leaks, or defects that will impair treatment must not be used. Where concrete tanks are installed, sweating, or condensation at construction joints is acceptable.

(B)-(C) (No change.)

(D) Pre-cast concrete, polyethylene, and prefabricated fiberglass tanks are subject to prior approval of the licensing authority, who should consult with the department regarding the uniquely differing materials, manufacturing methods, and designs used. All pre-cast or prefabricated tanks shall be clearly marked, tagged, or stamped with the manufacturer's name, and the capacity of such tanks near the level of the outlet in at least two positions so as to be clearly visible to the inspecting or permitting authority even after they have been placed in the ground. Direction of flow into and out of the tank shall be indicated by the words "in" and "out" or by arrows clearly marked at the inlet and outlet.

(E) Septic tanks must be installed so as to provide at least 12 inches drop in elevation from the bottom of the outlet pipe to the bottom of the disposal area. A washed sand or gravel (1-1/2 inch maximum) pad with a minimum thickness of four inches must be placed under all prefabricated tanks. Unless otherwise specified by a tank manufacturer's requirements, all septic tank excavations must be backfilled with sand, pea gravel, select backfill, or loam. It is acceptable to mound soil over a septic tank which is set high to maintain fall to the drainfield.

(F) When sewage must be pumped to a treatment unit or a disposal area, an appropriate pump shall be placed in a watertight tank. A check valve shall be provided if the receiving unit is upgrade and higher than the pump. The tank shall be provided with a high-water alarm having a power circuit separate from the pump. The electrical connections located inside the tank shall be hard-wired. Electrical connections located outside the tank may be plug-in type. Pump tanks shall have a minimum excess volume equivalent to 10 minutes at average daily flow after the alarm is activated, and shall be constructed as a separate unit or watertight chamber.

(b) Septic tank design—institutional.

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

(3) Compartments to be provided. A minimum of two compartments or a maximum of three shall be provided, the first created by a wall with a tee to permit liquid flow from the first compartment to the second one. The flow line of this intermediate fitting shall be at the elevation of the flow line of the outlet fitting of the second or third compartment. The fitting shall be three inches below the elevation of the flow line of the first compartment's inlet fitting. The minimum liquid depth of all septic tanks must be 30 inches. The capacity of the first compartment in a two-compartment arrangement shall be 50% to 67% of the total required volume. When three compartments are proposed, the first compartment must have one-half of the total volume and the other half divided equally between the other compartments. All tanks must be vented internally.

(4) Selection of septic tank capacity. The net volume or effective capacity below the flow line of a septic tank for flows up to 250 gallons per day shall be at least 750 gallons. For flows between 250 and 5,000 gallons per day, the capacity of the tank shall be equal to at least three days' sewage flow. For singular or collective daily flows over 5,000 gallons per day, the determination of the necessity for a waste discharge permit must be obtained from the commission.

(5) Pump tank usage. When sewage must be pumped to a treatment unit

or a disposal area, an appropriate pump shall be placed in a separate watertight tank. A check valve shall be provided if the receiving unit is upgrade and higher than the pump. The tank shall be provided with a highwater alarm having a power circuit separate from the pump. The electrical connections located inside the tank shall be hard-wired. Electrical connections located outside the tank may be plug-in type. Pump tanks for flows less than 500 gallons per day shall have a minimum volume of one day's storage after the alarm is activated. For daily flows over 500 gallons, a duplex pump configuration must be provided, and the tank shall have a storage volume of two hours at peak flow or four hours at average flow, whichever is larger. A dual pump system should have the alarm on level at or below the second pump on level, and should have a lock-on feature in the alarm circuit so that once it is activated it will not go off when the second pump draws the liquid level below the alarm on level. The alarm should have a manual reset switch. Pump switchgear shall be selected such that both pumps shall operate as the first pump on an alternating basis.

(c) On-site aerobic sewerage plants.

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

(3) Permit policy. Subject to the requirements of the department or local regulatory authority, an owner of a home, small business, or institution may elect to use an aerobic individual wastewater disposal system.

(4) Effluent disposal practice. Effluent from an individual aerobic wastewater treatment plant may be discharged into a properly designed and constructed subsurface sewerage system or allowed to be surface discharged in accordance with state laws and policies established by the department and the commission.

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

(8) Treatment limitations. Unlike septic tanks, aerobic units are not sized according to their liquid capacity. These units are sized according to their treatment capability in terms of gallons per day (gpd) of wastewater flow. Aerobic treatment plants operate by mixing raw sewage together with air and masses of bacteria, which consume the sewage in the presence of air. Treated effluent still contains microscopic bacteria and viruses that were in the raw sewage. Therefore, the effluent must be kept out of contact with the general public as much as possible. It is possible to disinfect treated sewage with chlorine, bromine, ultraviolet light, ozone, or other commercially available products. However, existing disinfection technology will not make aerobically treated sewage safe enough to be used as potable water. Subsurface disposal systems for aerobic plant effluent shall be the same as for septic tank effluents.

(9) Siting considerations. Most aerobic treatment plants sized for single

home or small commercial shop use are usually larger than a septic tank but may not be installed as deeply. The organic loading of commercial or institutional applications may require individual design considerations. The treatment unit inspection access is exposed to the surface.

(10) Solids accumulations. Periodic carryover of floating or settled solids is the major reason for effluent quality deterioration from aerobic units. Bulking of sludge (sludge that will not settle), toxic chemical additions from the home, and excessive buildups of sludge are common causes of carryover. The owner or the contracted service should inspect the unit quarterly. Excess solids should be removed when the quarterly inspection indicates the need. Sludge bulking may be caused by an inefficient aeration system. The periodic inspections should include the blower and aerator of an aerobic treatment plant. An inoperable blower or aerator should be serviced or replaced as soon as possible.

(d) Grease traps and interceptors.

(1) Installation. A grease trap is a tank that holds 20 to 30 gallons of water in a single compartment. An interceptor is a larger device which has two compartments. Grease traps or interceptors shall be used on kitchen wastelines from institutions, hotels, restaurants, schools with lunchrooms, and other places that may discharge large amounts of greases and oils to the sewer. However, wastes from garbage grinders must not be allowed to enter a grease trap unless the grinder is connected to a separate, independent interceptor, the unit has been properly sized according to paragraph (2) of this subsection, and approval has been obtained from the local regulating agency. The trap or interceptor shall be installed near the plumbing fixture that discharges greasy wastewater and should be easily accessible for cleaning. For maximum grease removal, a dual-chambered interceptor that separates, then stores grease shall be utilized. If the dual-chamber interceptor is installed as close as possible to the source of hot greasy wastes, the separated grease can be conveyed to the secondary chamber, where it accumulates, cools, and solidifies. Grease traps and interceptors shall be cleaned out periodically to prevent the discharge of grease to the underground disposal system.

(2) Sizing. Grease trap and grease interceptor sizing will depend on the particulars of the application. Building code authorities and manufacturers should be consulted prior to sizing the unit. Grease traps must be sized in accordance with local requirements. No grease interceptor with a liquid holding capacity of less than 100 gallons, shall be approved for any institutional food preparatory establishment. Grease traps and interceptors shall be sized using either the Uniform Plumbing Code or local sizing requirements, whichever size is largest, to determine maximum flow rate. If

garbage disposals are required or allowed by the permitting authority, they shall be plumbed into an interceptor. The interceptor primary compartment shall hold at least 60% of the total volume required; the secondary compartment shall hold 40% of the required volume.

(3) Inlets and outlets. Grease trap and grease interceptor inlets and outlets should be submerged under the normal liquid level. The compartments of the grease trap or interceptor should be vented to the open air. Cleanouts at the inlets and outlets should be provided external to the grease interceptor.

§301.13. Design Standards for Effluent Disposal Systems.

(a) (No change.)

(b) Percolation test procedures. It has been previously mentioned that the percolation test is but one of many indicators of a site's future suitability to accept sewage for safe permanent disposal. Consequently, it should not be considered as the sole basis of designing an on-site sewerage system. Experiences of local regulatory agents will have priority over the test results. Experience should be based on tests conducted during the wettest season of the year.

(1) Location and number of tests. A minimum of two test holes will be required with the holes uniformly spaced over the proposed absorption field site. Disposal systems such as evapotranspiration beds and mounds may not require percolation tests. The actual number of holes required for an individual soil evaluation should be determined experimentally in accordance with the following procedures:

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

(2) -(4) (No change.)

(5) Filling of test holes. In the conduct of the test, carefully fill the hole with clear water to a minimum depth of 12 inches. In most soils, it is necessary to refill the hole by supplying a surplus reservoir of water manually or by means of an automatic siphon, to keep water in the hole until saturation occurs (approximately 24 hours).

Determine the percolation rate 24 hours after water is first added to the hole. This procedure is to insure that the soil is given ample opportunity to swell and to approach the condition it will be in during the wettest season of the year. Thus, the test will give comparable results in the same soil, whether made in a dry or in a wet season. In sandy soils containing little or no clay, the test may be made as described in paragraph (7) of this subsection after the 24-hour saturation period.

(6) Percolation rate measurement. Percolation rate measurements shall be made on the day following the procedure described in paragraph (5) of this subsection. After the overnight swelling period, adjust the water depth to approximately 12 inches from the bottom. From a fixed reference point, measure the drop in water level over a 30-minute period. This drop is used to calculate the percolation rate. If the rate is slower than 30 minutes per inch, continue with measuring the rate for an additional 30 minutes. The slower rate of the two consecutive one-half hour tests should be used.

(7) (No change.)

(c) Effluent disposal systems.

(1) (No change.)

(2) Soil absorption trench. A soil absorption trench may be used if the proposed site provides sufficient room and is of suitable soil. If the soil is not suitable, or adequate spacing is not feasible, an alternate system shall be used. An experienced soils scientist, registered professional engineer, or registered professional sanitarian should be consulted to determine if the site qualifies for trenches.

(A) Absorption trench field for level terrain. Where the topography or ground slope is not too steep, a flat or level system of gravel-filled absorption trenches is recommended. The optional use of a looped trench system will avoid dead ends and assure maximum effective utilization of all portions of the system. No individual trench shall exceed 75 feet in length. Closed loop trench designs shall incorporate headers and laterals to eliminate trenches that exceed 75 feet in length.

- polyvinyl chloride (PVC) 3 inch diameter
 - ASTM D3034, SDR 35
 - ASTM D2729
 - ASTM F 789
- Polyethylene, corrugated 4 inch diameter
 - ASTM F 405, standard tubing
- Polyethylene, smoothwall 3 inch diameter
 - ASTM F 810

(iv) Piping made of different materials may be used if approved by the local licensing authority after departmental consultation prior to its installation.

Jointed tile is not recommended for use because of the difficulty in maintaining joint spacing and keeping the line level. Geotextile filter fabric material or a hay

(i) (No change.)

(ii) All parts of the trench bottom shall be at the same elevation. Trenches should be constructed as shallow as possible with a minimum depth of 18 inches and a maximum depth of 36 inches. Deeper trenches should be used where snow may saturate the upper portion of the trench. For trench depths greater than 24 inches (except where snow exists), sand shall be used to fill the trench up to the top soil cover as shown in Figure 3. The trench width shall not exceed 36 inches, as narrow trenches (12 to 18 inches) are recommended. Although trench length is based on bottom area only, sidewall area is important since much of the wastewater is absorbed through the sidewalls and is eventually evapotranspired. Minimum allowable spacing between adjacent edges of parallel trenches is three trench widths or five feet, whichever is smaller.

(iii) The proper installation of adequate construction materials is vitally important to the success of an absorption trench system. Materials include piping, media, media barrier, and backfill. A liquid from the sewerage unit is conducted to the absorption system via a watertight line similar to the house sewer. The liquid is distributed uniformly through the gravel-filled trenches by the use of two-inch to 10-inch perforated plastic pipe of any one size, or equivalent pipe materials. It is important that the distribution piping be laid reasonably level (four inches per 100 feet maximum allowable grade) in the trenches, with a minimum of six inches gravel depth under the pipe. A minimum gravel depth of approximately 12 inches is required. The trench media must be clean graded gravel, broken vitrified brick, washed rock, crushed stone, crushed hardened limestone, or similar aggregate that is generally one uniform size (from 0.75 inches to 2.0 inches). Refer to the definition for uniform gravel size in §301.11(b)(49) of this title (relating to Definitions). Oyster shell, other types of shell, and soft limestone are not allowed for trench media because the cementitious properties of this type of material often result in early trench failure. The perforated distribution pipe and fittings shall consist of the following materials and minimum sizes:

layer two to four inches thick, placed over the top of the gravel is required to prevent the sandy loam or sand backfill from invading the gravel until the backfill becomes

stabilized. Refer to paragraph (7)(B) of this subsection for minimum requirements for the geotextile filter fabric. Tar paper or other impervious material shall not be used under any circumstance. The pipe selected for drainfield construction shall have sufficient strength to resist crushing from external loadings such as earth fill, garden tractors, riding mowers, and similar yard equipment. Bituminous fiberboard or paper pipe shall not be used anywhere in the sewerage system. Poor construction practices will cause serious damage to the soil absorption system. Prior to issuance of a permit, notice shall be given to the regulatory authority of the types of piping proposed.

(v) It is extremely important that care be taken to avoid sealing the surface of the bottom and sides of the absorption trenches through smearing. Trenches or beds shall not be excavated when the soil is sufficiently wet so as to smear or compact easily. All smeared or compacted surfaces occurring during construction shall be raked to a depth of one inch and loose material removed just before the gravel or other media is placed. The absorptive areas should not be walked on unnecessarily. The completed surface of the disposal area must not be paved, used for parking of vehicles, or covered with impermeable materials.

(B) Absorption trench field for irregular terrain. Where the topography or ground slope is too steep for feasible construction of a level trench system but where the slope is free of ledges or breaks and is less than a 15% grade, the following alternate layout may be used. There shall be

a minimum 16-inch drop from the bottom of the septic tank outlet pipe to the bottom of the first trench when trenches are installed in this configuration.

(i) A single level trench, constructed with a relief line is built along a contour. The overflow from this trench is conducted via a watertight pipe to the next lower level where a second trench can be built along a contour similar to the upper trench. The pattern can be repeated until the required minimum trench bottom area has been provided. It is required that no individual trench exceed 75 feet in length. This technique is graphically illustrated in Figure 4. Other details of trench construction described in subparagraph (A) of this paragraph, and shown in Figure 3, should be followed.

(ii) (No change.)

(3) Soil absorption beds. In addition to the trench-type absorption field, two or three absorption beds of reasonably equivalent areas, separated by at least five feet and using watertight flow diversion valving (see Figure 5), may be used in areas where the combination of soil percolation and lot size precludes the use of a trench-type system with minimum spacing between trenches. While absorption beds require more bottom area than trenches, they tend to be more compact.

(A) Construction. The bed shall be constructed with its depth ranging from 18 inches to 36 inches. It shall be kept as shallow as possible to promote aerobic bacterial action in the soil. The bottom of the bed must be level to within two inches overall for uniform wastewater distribution.

For Single-Family Situations:

$$A = \frac{150(1 + B)}{R_a}$$

Where:

A = The total absorption bed area required for two beds.

B = The total number of bedrooms in the dwelling.

R_a = Sewage application rate for absorption trenches expressed as gallons per square foot of bed bottom, per day based on percolation rate.

(See Table VI)

For non-single family residential situations:

$$A = \frac{2Q}{R_a}$$

Where:

Q = The total daily wastewater discharge in gallons from that situation.

(4) Evapotranspiration beds.

(A) General. Evapotranspiration bed systems are alternate systems and may be used in locations where soil conditions are not suitable for any type of soil absorption system. For very porous soils, fill dirt, solutioned limestone, fractured bed-rock, and situations that would allow exces-

sively rapid migration of sewage toward groundwater, lined evapotranspiration beds must be designed and certified by a registered professional engineer, registered professional sanitarian, or qualified designer. The beds must be located outside the flood-prone area and not within areas subject to inundation or erosion by flood waters or rainfall runoff. An applicant for a permit to install a sewerage system shall consult with

Fill dirt, top soil, or other material unacceptable to the regulatory authority shall not be placed on the bed bottom for any reason. Media (gravel, crushed stone, etc.) that is generally one uniform size from 0.75 to 2.0 inches shall be placed on the bed bottom followed by two or more distribution pipes spaced six to 12 feet apart and between three to four feet from the edge of the bed. The amount of gravel and spacing between the pipes is dependent on the size of the pipe used. The distribution pipe is then surrounded with additional gravel to the top of the pipe. The pipe must be one size, from two to 10 inches in diameter. The total depth of the gravel in the bed is 12 inches. The gravel shall then be covered with geotextile filter fabric, or a two-inch to four-inch layer of hay, to prevent the soil layer from invading the gravel and reducing porosity. The next soil layer shall consist of sand, sandy loam, or a mixture of the two.

(B) (No change.)

(C) Capillary medium. If clay, rock, or other semi-impervious material is excavated from the bed site, it must be removed and under no circumstances be used as backfill in the bed. Sand or sandy loam will provide a capillary medium to help eliminate some of the wastewater through evapotranspiration, as explained in paragraph (3) of this subsection. The bed shall be filled to within six inches from the top with sand or sandy loam and mounded with sandy loam so that the center of the bed is approximately four inches above normal ground elevation. This will provide drainage away from the absorption bed. When this system is used, the total absorption bed area must be calculated using the following formulas:

the local flood plain ordinances administrator, county engineer, State Highways and Public Transportation Department, nearest river authority, Farmers Home Administration, Federal Emergency Management Agency, and any other officials who may have information regarding the potential for flooding at the site of the evapotranspiration beds.

(B) Evapotranspiration bed construction features. The following factors must be considered in the design of evapotranspiration beds: annual mean rainfall and wettest month of the year, annual mean evaporation rate and monthly minimal rate, growing season variations, native grasses and shrubs available for cover, absorptive capacity of the soil surrounding an unlined bed, and site conditions, including varying sunlight and air movement.

(i) (No change.)

(ii) An evapotranspiration bed system is one of the candidate disposal methods that may be constructed in impervious soil or soil with very high absorptive capacity. When the soils have a very high percolation rate, less than five minutes per inch, liners approved by the local regulatory authority must be constructed to guard against the possibility of wastewater discharging through the soil (fissured rock or gravel) and contaminating streams, lakes, or shallow groundwater. Impervious liners may consist of reinforced concrete, 20-mil minimum single layer thickness plastic, or rubber liners. All must be repairable in the field. Liners are not required in slowly permeable soils (having permeability of less than 10 to the minus four centimeters per second) and should not be used since some of the wastewater may be absorbed into the soil and will help to reduce the overall evapotranspiration load. An evapotranspiration system shall be designed using the following parameters.

(I) Beds may be designed in any configuration subject to the approval of the permitting agency (square or round, for example), but the total number of square feet of bed bottom area must be determined by the formulas in subparagraph (C) of this paragraph.

(II)-(III) (No change.)

(IV) It is possible for a liner to be damaged after it has been

covered, causing the bed to leak sewage without showing at the surface. At the discretion of the permitting agency, each bed may be required to have a separate monitor system installed in a manner that will facilitate collection and sampling of effluent leakage from a ruptured liner. The monitor system is designed to offer a means of detecting liner failure through periodic dye testing and sampling, which will help ensure the protection of the environment. The entire monitor system must be assembled and ready for approval during a single inspection. No sand shall be put in place as a cushion until the monitor system has been inspected and approved by the licensing authority.

(V) As regards leak monitor system, its design features, as illustrated in Figure 6, are as follows.

(-a-) As regards leak monitor piping material, all piping must be three to four inches in diameter. All perforated collection lines of an evapotranspiration bed monitor system must conform to the pipe material requirements set forth in paragraph (1)(A)(iii) of this subsection. The standpipe and sample sump must be of Schedule 40 polyvinyl chloride or stronger. Leak monitor collection pipe shall be wrapped with a filter cloth meeting requirements as set forth in paragraph (7)(B) of this subsection. All connections shall be glued or rubber gasketed joints with the exception of the intruder resistant standpipe cap located at finished topsoil grade. Perforations in the collection lines must face downward, with the two rows of perforations equally offset perpendicular to the ground.

(-b-)-(-d-) (No change.)

(-e-) The collection line(s) shall tee into a solid wall two to three inches standpipe which must have a sampling sump below the bottom of the tee. This sump shall be eight to 12 inches in

depth, measured from the bottom of the tee. A cap or plug must be glued to the bottom of the sump to provide a watertight connection. The top of the standpipe shall be flush with the finished grade of topsoil, and shall be covered with an intruder-resistant, removable access cap. A minimum three-inch wide by three-inch deep dry moat shall surround the standpipe cap to facilitate ease of cap removal and replacement.

(-f-)-(-g-) (No change.)

(VI) Rock media that is generally one uniform size from 0.75 to 2.0 inches shall be placed on the bed bottom to a minimum depth of 12 inches after the liner and sand cushion are placed over the monitor system.

(VII) The top of the distribution pipe must be flush with the rock media and adequate to provide for uniform distribution of effluent. A 12-foot maximum separation between pipes and three to four feet separation between bed walls and the pipe is permissible. The bed bottom and the pipe must be level.

(VIII) A permanent water permeable sand barrier, such as geotextile filter fabric, is then placed over the rock. Sand is then added to fill the bed to within two inches from the top.

(IX)-(XI) (No change.)

(C) Bed sizing. Evaporation and rainfall data for various areas of the state are listed in Table VII. Additional data may be found in Report 192 and Report LP192, published by the commission. After the reader considers the requirements in subparagraph (B) of this paragraph, the bed area may be approximated by using the following formulas:

For Single-Family Situations:

$$A = \frac{31,000(1 + B)}{E_A - 1/2 RFR_A}$$

Where A = Total area of both beds (To find one bed area divide A by 2)

A = Total number of bedrooms (B = 2 for minimum residence. For a two bedroom house with a living area of 1500 sq. ft. or more — use B = 3. For each additional 800 sq. ft. — Increase B by one.)

E_A = Mean pan evaporation rate in inches per year
(See Table VII)

RFR_A = Mean rainfall rate in inches per year
(See Table VII)

For Non-single family residential situations:

For Non-single family residential situations:

$$A = \frac{310Q}{E_A - 1/2 RFR_A}$$

Where Q = Average daily flow into the system, expressed as gallons per day
(See Table III).

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

(5) Pressure dosing systems (a disposal alternative).

(A) Description. A basic pressure dosing system must consist of an approved sewerage system, an effluent holding tank, an easily serviced screened intake electric pump which is activated by a float or programmed start/stop switch, a solid wall force main, and perforated distribution piping which is installed within the absorption area. The effluent pump must be capable of an operating range that will assure that effluent is delivered to the most distant point of the perforated piping network, yet not be excessive to the point that blow-outs occur in shallow systems. The programmed start/stop switch should allow the pump to operate at least three times during the 24-hour day. A high-water alarm, on an electric circuit separate from the pump, must be provided. After the alarm activates, the residential or institutional effluent holding tank shall have the storage capacities as stated in §301.12(a)(4)(F) or (b)(5) of this title (relating to Design Standards for Sewerage Systems). The number of perforations per length of pipe and the number of pipe lengths used per absorption area must be adequate to assure uniform liquid distribution over the entire bed area.

(B) Application. Pressure dosing is an appropriate method of conveying effluent from a treatment site that is at a lower elevation than the disposal site. It is also appropriate where seasonal high water

tables exist or where the soil mantle thickness is from two to four feet to solid rock. In these situations the system must be oversized substantially to promote the effect of evapotranspiration. Commercial establishments may need to use continuously staged pressure dosing if their flow rates vary greatly during their business hours. The United States Department of Commerce (USDC) has produced North Carolina State University Sea Grant College Publication UNC-S82-03 which discusses the design of a low pressure dosing system for subsurface disposal of treated sewage. It is a 31-page document that was published for public use in May 1982. Inquiry on how to obtain a copy should be sent to the department. At the discretion of the local regulatory agent, pressure dosing systems must be designed by a registered professional engineer, registered professional sanitarian, or other qualified designer. Minimum gravel size for these systems shall be 3/8 inches. The EPA Design Manual, discussed in subsection (a) of this section, also has information. Although these publications are referred to for design information, the department does not adopt them or any other technical literature.

(6) Mound systems (a disposal alternative).

(A) Physical description. A mound system is comprised of the native soil above the restricting layer (groundwater level, fissured rock, etc.), a scarified interface between the native soil and a sand fill, a sand fill, a gravel distribution bed, distribution piping, and a topsoil cover. The depth of the material between the gravel distribution bed and the restricting layer shall be at least four feet. The preferred

shape is a long narrow rectangle, with the long dimension laid out along a contour. Effluent shall be pressure-dosed into the distribution piping to ensure equal distribution and to control application rates as described in paragraph (4) of this subsection.

(B) (No change.)

(7) Gravelless drainfield piping (a disposal alternative).

(A) Appropriateness.

Gravelless pipe may be used in place of conventional gravel-filled trench systems. The regulatory authority and permit applicant shall carefully consider all site conditions and circumstances before arriving at decisions regarding pipe diameter selection, trench dimensions, depth of the installed pipe, and suitability of on-site soil as backfill material.

(B) Physical description.

(i) Gravelless pipe generally consists of eight-inch or 10-inch diameter corrugated polyethylene pipe having two rows of perforations located approximately 120 degrees apart along the pipe's bottom half. The pipe is enclosed in a layer of unwoven spun-bonded polypropylene, polyester, or nylon filter wrap. Pipe shall meet American Society for Testing and Materials, ASTM F-667 Standard Specifications, for large diameter corrugated high density polyethylene (ASTM D 1248) tubing. Perforations shall be 1/2 inch diameter in 10-inch diameter pipe and 3/8 inch diameter in eight-inch diameter pipe. Perforations shall be arranged and spaced so that only one

hole exists in each inner corrugation. The filter cloth must meet the following material specifications:

	Minimum Values
Weight, oz. per sq. yd. (ASTM D3776)	0.70
Grab Strength, lbs. (ASTM D4632)	11
Air Permeability, cfm per sq. ft. (ASTM D737)	500
Water Flow Rate, gpm/sq. ft. @ 3" head (ASTM D4491)	33
Trapezoidal Tear Strength, lbs. (ASTM D4533)	6

(ii) Installations must be in accordance with the pipe manufacturers' instructions. However, the system installer is cautioned against surrounding the pipe with native soils having percolation rates slower than 30 minutes per inch or laden with very fine soil particles that might plug the filter wrap.

(C) (No change.)

§301.14. Disposal Alternatives/Special Applications.

(a) Surface irrigation systems. Designers and local authorities shall refer to Texas Department of Health for the most recent policy regarding the disposal of wastewater by surface irrigation. These systems must be designed by a registered professional engineer or registered professional sanitarian and submitted to the regulating authority or the department for approval.

(b) Greywater systems. Generally, blackwater and greywater are approximately 40% to 60% of the total domestic sewage flow, respectively. Subsurface greywater systems may be utilized with disposal of blackwater through a split system only under the following conditions.

(1) Designers and local authorities shall refer to the Texas Department of Health for the most recent policy regarding the disposal of greywater by subsurface absorption, evapotranspiration, or surface irrigation. A greywater disposal system utilizing anything other than conventional sewage treatment and absorption beds or

trenches shall be designed and certified by a registered professional engineer, registered professional sanitarian, or qualified designer who can provide to the permitting authority evidence that the system complies with all appropriate state regulations and local governmental regulations.

(2) (No change.)

(c) Composting toilets. The composting toilet unit must be able to meet the requirements of the National Sanitation Foundation's Standard Number 41, concerning wastewater recycle/reuse and water conservation devices. The NSF seal on a particular unit indicates its ability to meet the requirements. Commercially manufactured units not bearing the NSF seal, or private custom designed units must be evaluated by the department. If the department finds that the system is designed in accordance with good engineering practices and has satisfactorily proven its performance in actual on-site situations, the unit may be approved by the department. The liquid waste from a composting toilet unit must be disposed of through an approved subsurface disposal system.

(d) Sewage recycling systems. For small on-site applications, sewage recycling systems are very limited in types and capability as follows.

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

§301.15. On-site Sewerage System Maintenance and Water Conservation.

(a) The professional installer should provide the owner of an on-site disposal

system the following maintenance and water conservation information free of charge.

(1) An on-site sewerage system should not be treated as if it were a city sewer.

(2) Economy in the use of water helps prevent overloading of a sewerage system that could lessen its usefulness.

(3) Leaky faucets and faulty commode fill-up mechanisms should be carefully guarded against.

(4) Garbage grinders can cause a rapid buildup of sludge or scum resulting in a requirement for more frequent cleaning and possible system failure.

(5) The excessive use of garbage grinders and grease discarding should be avoided.

(b) Water conservation measures that will reduce the load on the on-site sewerage system include the following.

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

(6) Reduce the amount of water used for flushing the commode by installing a toilet tank dam or filling and capping two one-quart plastic bottles with water and lowering them into the tank of the commode. Do not use bricks since they may crumble and cause damage to the fixture. If a new toilet is installed, install a 1-1/2 gallon (or less) commode rather than the conventional three-to-five gallon fixture.

(7)-(13) (No change.)

(c)-(j) (No change.)

§301.17. Tables and Figures.

(a) Table I. The following table covers the minimum required distances in feet for conventional systems:

Sec. 301.17. Tables and Figures

TABLE I
MINIMUM REQUIRED SEPARATION DISTANCES IN FEET FOR ON-SITE SEWERAGE UNITS

From	To:	Sewage Treatment Tanks or Holding Tanks	Lined Evapo. Beds	Soil Absorption Systems or Unlined Evapo. Beds	Sewer Pipe With Watertight Joints
Private Water Wells, Underground Cisterns and Pump Suction Pipes		50	150*	150 +	20
Public Water Wells		50	150*	150	20
Water Supply Lines		10	10	10	9
Streams, Ponds, Lakes and Salt Water Bodies****		75	75*	75	20
Sharp Slopes, Breaks		5	—	50**	5
Foundations, Structures and Surface Improvements		5	5	15	—
Property Lines		10	10	10	—
Easement Lines		1	1	5***	—
Soil Absorption Systems		5	5	20	—
Swimming Pools		15	15	15	—

* When a leak detection system, as described in Sec. 301.13.(c)(3)(A)(ii)(IV)(-a-) is used, the minimum required distance is 50 feet to existing private water wells, cisterns and pump suction pipes.

** The absorption system's bottom must be a minimum of 50 feet from any breaks or outcropping ledges, unless it is designed by a Registered Professional Engineer or a Registered Professional Sanitarian having hydrogeological data of the strata below the system's site. Greywater disposal areas may be installed as close as 25 ft. from the slope face.

*** A drainage easement having sloped sides greater than 30% or grade breaks will require adherence to the 50 foot criteria indicated by **.

+ This distance may be reduced to a minimum of 50 feet, for existing or proposed private water wells only if the space between the existing private water well casing and the surrounding ground is filled with cement slurry that is pumped through a tube that extends to the required depth of sealing. This depth shall be at least two times the horizontal encroachment measurement but not more than the depth to the water producing strata. A three foot square by six inch thick concrete slab shall be poured around the casing.

**** These distances apply to high-tide water levels only.

(c) Table III. The following table covers individual usage rates in businesses and institutions:

TABLE III
**INDIVIDUAL USAGE RATES
 IN
 BUSINESSES/INSTITUTIONS**

This table may be used for estimating gallons of daily sewage flow per person to determine minimum tank capacity requirements, unless actual water usage data is available and has been carefully checked by the designer of the proposed system

TYPE OF ESTABLISHMENT	GALLONS/PERSON/DAY
Airports (per passenger)	5
Apartment Houses	50
Boarding Schools	50
Churches (per member)	5
Country Clubs (per resident member)	100
Country Clubs (per non-resident member present)	25
Day Care Centers (without kitchen)	15
Day Care Centers (with kitchen)	25
Drive-in Theaters (per car space)	5
Factories (gallons per person per shift, exclusive of industrial wastes)	20
Hospitals	200
Hotels	80
Institutions other than Hospitals	100
Laundries Self-service (gallons per wash, i.e., per customer)	50
Lounges (bar & tables)	10
Mobile Homes	75
Motels	50
Movie Theaters (per auditorium seat)	5
Office Buildings*	15
Parks (without bathhouse)	5
Parks (with bathhouse)	15
Restaurants (24-hour full service)	70/seat/day
Restaurants (breakfast/lunch or lunch/dinner)	35/seat/day
Restaurants (fast food — paper plate service)	15/seat/day
Schools without cafeterias, gymnasiums or showers	15
Schools with cafeterias, but no gymnasiums or showers	20
Schools with cafeterias, gymnasiums and showers	25
Service stations (per vehicle served)	10
Stores (total per day per washroom)	400
Swimming Pools and Bathhouses	10
Townhouses (with clothes washer)	50
Travel Trailer/RV Parks	50/space/day
Vet Clinics (per animal)	10
Work or Construction Camps (semi-permanent)	50
Youth camps (no showers or meals served)	15

*Note Offices without Food Service or Bathing Facilities, with Restrooms Equipped with Toilets Requiring 1.5 Gallon per Flush or Less, and Automatic Cutoff Faucets 6

(e) Table V. The following table covers criteria for soil absorption of sewage effluent developed for site specific evaluations:

TABLE V
**CRITERIA FOR SOIL ABSORPTION OF SEWAGE EFFLUENT DEVELOPED FOR
 SITE SPECIFIC EVALUATIONS**

Site Characteristic	Classification		
	Suitable	Provisionally Suitable (1)	Not Suitable
Topography	Slopes 0-15%	Slopes 15-30%	Slopes greater than 30% Complex slopes.
Subsoil Texture	Sandy soils Loamy soils	Clayey soils with low shrink-swell potential.	Clayey soils with high shrink-swell potential.
Subsoil Structure		Angular or subangular blocky.	Platy structure. Weathered rock. Massive clayey soils.
Soil Depth	Weathered rock or consolidated bedrock greater than 48 inches below the bottom of disposal system.	Weathered bedrock or consolidated rock from 36 to 48 inches below the bottom of disposal system.	Weathered rock or consolidated bedrock less than 36 inches below the bottom of disposal system.
Restrictive Layer	None within 36 inches of the ground surface.		Restrictive horizon within 36 inches of the ground surface or below the trench bottom.
Soil Drainage	No drainage mottles within 36 inches of the bottom of disposal system.		Drainage mottles (chroma 2 or less) within 36 inches of the bottom of disposal system.
Flooding			Areas subject to a possible flood. Depressional areas without adequate drainage.
Percolation	Greater than or equal to 5 min/inch but less than or equal to 60 min/inch.		Less than or equal to 5 min/inch or greater than 60 min/inch. Unselective fill materials.

(1) Soil may be reclassified from unsuitable to provisionally suitable under certain conditions using acceptable site or system modification.

(f) Table VI. The following table covers absorption trench and bed sizing for single family residential:

TABLE VI
CONVENTIONAL ABSORPTION TRENCH AND BED SIZING REQUIREMENTS FOR SINGLE FAMILY RESIDENTIAL DWELLINGS

Average Percolation Rate (Minutes/Inch)	Sewage Application Rate, R ₀	Soil Texture (See Table VIII USDA Soil Textural Classifications)	Minimum Bottom Area (Sq. Ft.) For One or Two Bedroom House (Living areas less than 1500 Sq. Ft.)	Minimum Bottom Area For Each Additional Bedroom* (Sq. Ft./Bedroom)
Less Than 5	More Than 12	Too Great For Consideration	Sand/Gravel	Conventional Systems Not Allowed See Section on Alternate Systems**
5-15	4-12	0.6	Sandy Loam	380 750 200 250
15-30	2-4	0.5	Sandy Clay	500 900 250 300
30-45	1.3-2	0.4	Silty Clay	625 1125 300 400
45-60	1.0-1.3	0.3	Clay Loam	800 1500 400 500
More Than	Less Than	Less Than	Clay	Conventional Systems Not Allowed See Section on Alternate Systems**

Minimum trench bottom area is calculated to include capacity for washing machine wastewater, organic material from garbage grinders, and infiltration from rainfall.

Required minimum spacing between parallel conventional absorption trenches is 3 trench widths, or five feet whichever is smaller.

*When dwellings consist of a large living area relative to the number of designated bedrooms, the following guidelines should be used to approximate the trench area:

For a two bedroom house with a living area of 1500 sq. ft. to 1900 sq. ft. — Use trench area for three bedroom house. For each additional 800 sq. ft. — Add trench area equal to one bedroom.

This criteria is valid for normal residential water consumption of approximately 75 gpd per resident by an average household occupancy and is not applicable to collective sewage system design.

**Disposal alternatives include evapotranspiration beds, low-pressure dosing systems, mound systems, gravelless drainfield piping, composting toilets, sewage recycling or items approved through department policy.

(g) Table VII. The following table covers mean pan evaporation and rainfall:

TABLE VII

MEAN PAN EVAPORATION AND RAINFALL

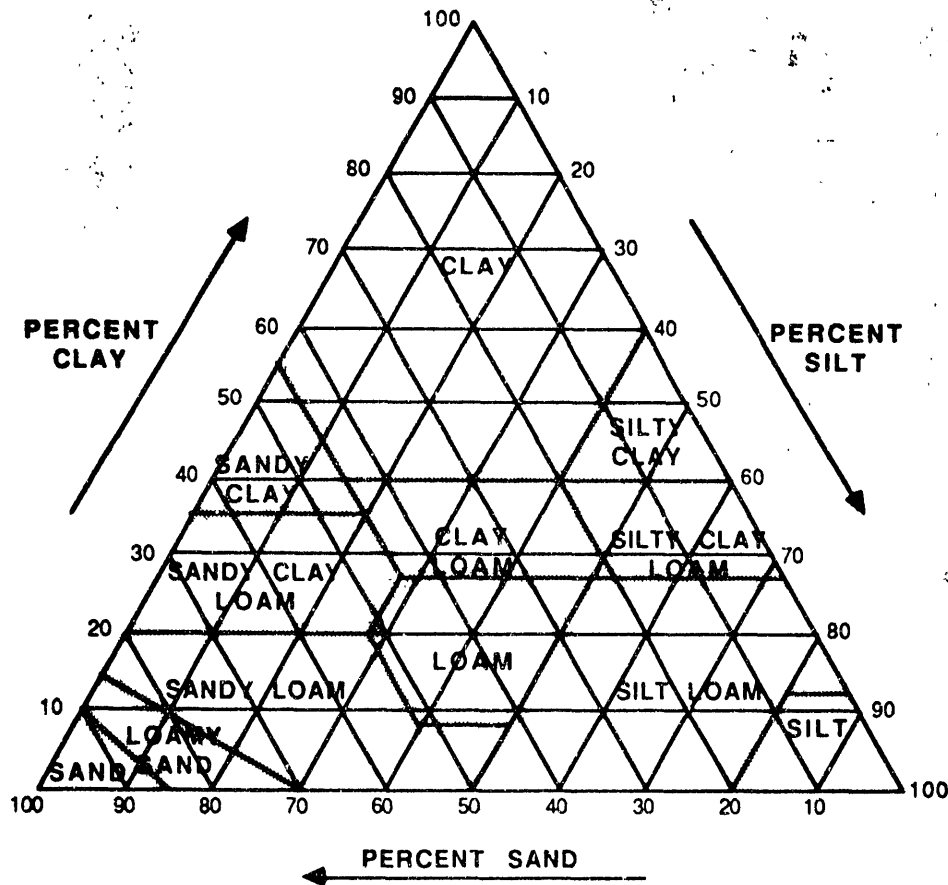
Station	EA		RFRA	
	Mean Evaporation Rate (Inches/Year)	Mean Rainfall (Inches/Year)	Mean Rainfall (Inches/Year)	1/2 RFRA (Inches/Year)
Amarillo	87.9	18.8	9.4	9.4
Austin	70.0	32.49	16.25	16.25
Beaumont	47.8	55.07	27.54	27.54
Big Spring	81.22	17.8	8.9	8.9
Brownsville	56.0	25.13	12.57	12.57
Chillicothe	68.84	24.0	12.6	12.6
Canyon Lake	80.8	33.19	16.60	16.60
Daingerfield	74.2	44.8	22.4	22.4
Dallas	85.0	35.94	17.97	17.97
El Paso	106.5	7.77	3.89	3.89
Fort Stockton	105.6	11.85	5.93	5.93
Houston	48.7	46.19	24.09	24.09
Lake Somerville	71.7	37.45	18.73	18.73
Laredo	108.6	21.0	10.5	10.5
Lubbock	88.7	18.41	9.21	9.21
Nacogdoches	44.84	45.0	22.5	22.5
San Antonio	64.68	30.0	15.0	15.0
San Angelo	109.36	19.0	9.5	9.5
Temple	68.2	34.00	17.0	17.0
Throckmorton	80.64	25.8	12.9	12.9
Tyler	44.87	42.0	21.0	21.0

NOTE: These rainfall and evaporation rates are based on best available historical records. However, local meteorological data may yield a more conservation design. In these cases, planners are advised to utilize local data.

(h) Table VIII. The following table covers USDA Soil Textural Classifications:

TABLE VIII

USDA SOIL TEXTURAL CLASSIFICATIONS



Clay — Smaller than 0.002 millimeters in diameter

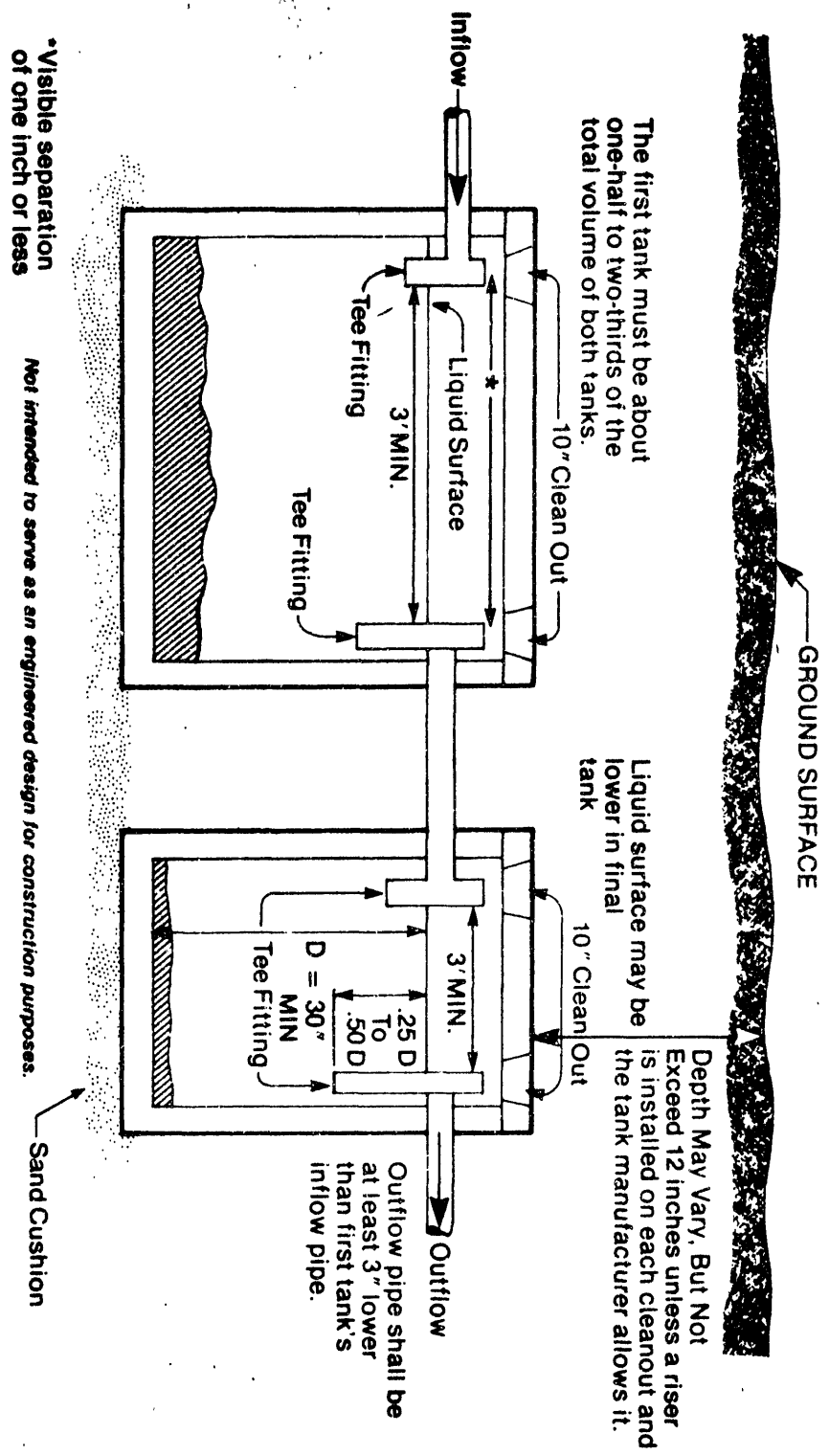
Silt — 0.05 to 0.002 millimeters in diameter

Sand — 2.0 to 0.05 millimeters in diameter

(Sand shall be free of organic matter and shall be composed of silica, quartz, mica or any other stable mineral).

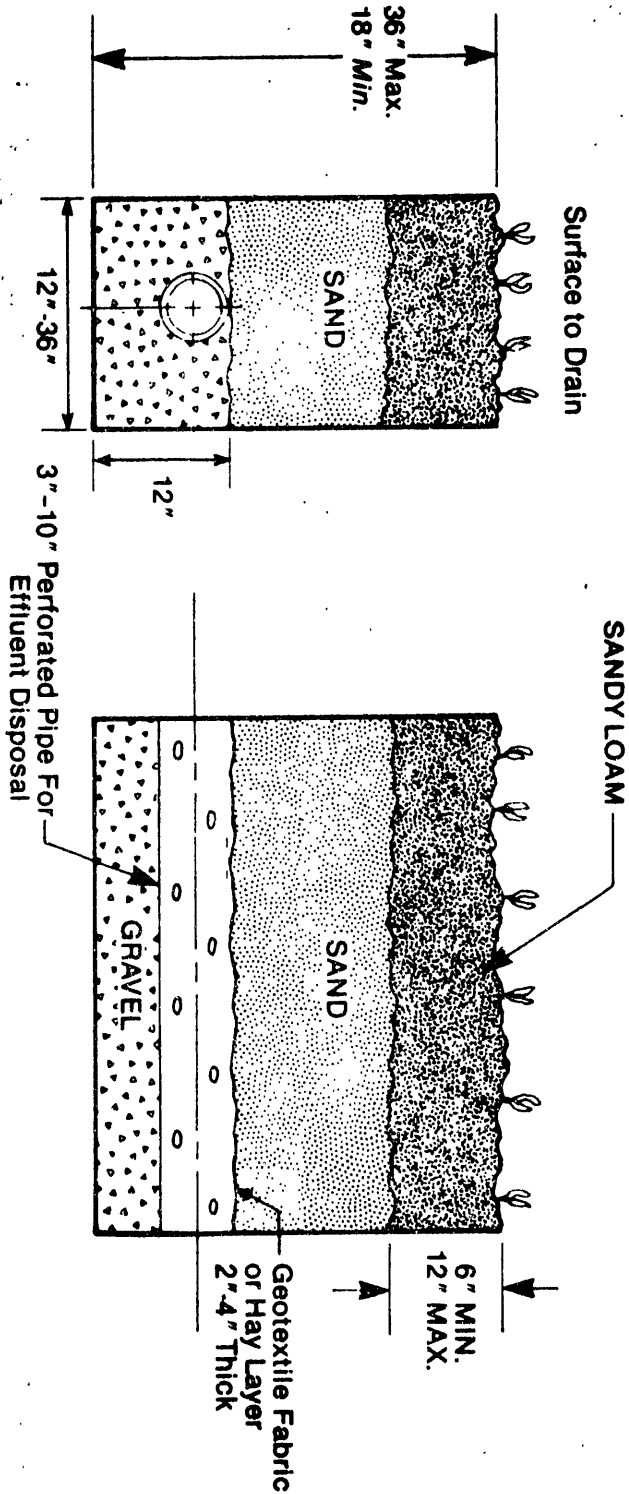
(f) Figure 2. The following figure illustrates two septic in series and is not intended to serve as an engineered design for construction purposes.

FIGURE 2
TWO SEPTIC TANKS
IN SERIES



(k) Figure 3. The following figure illustrates soil absorption trench details and is not intended to serve as an engineered design for construction purposes.

FIGURE 3
SOIL ABSORPTION TRENCH

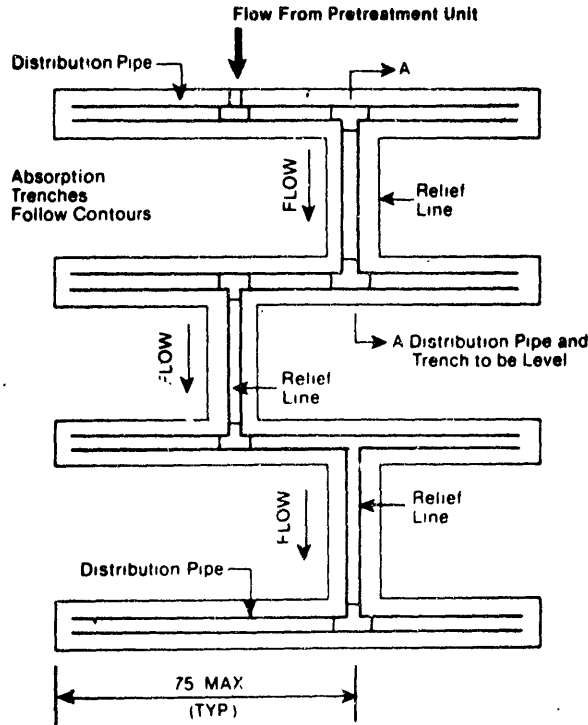


Not intended to serve as an engineered design for construction purposes.

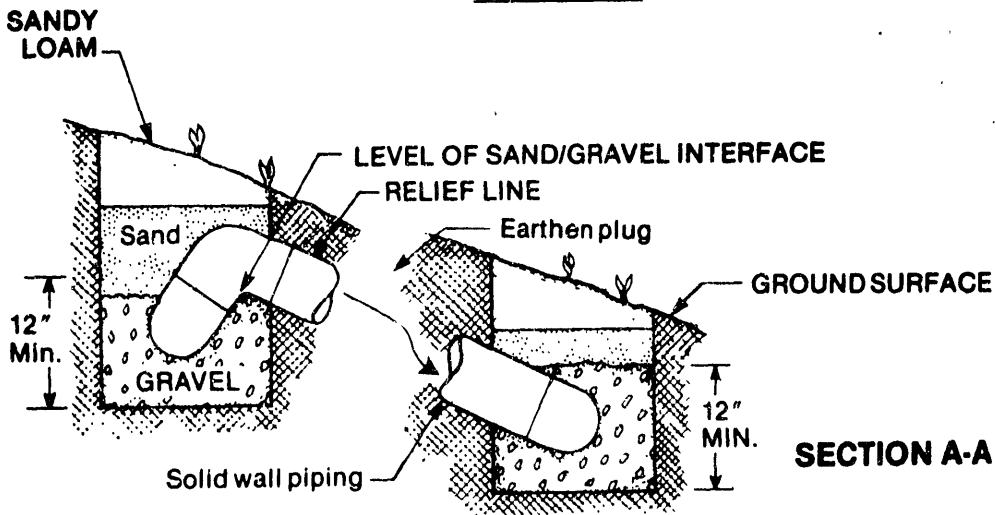
(i) Figure 4. The following figure illustrates a septic tank system for sloping ground without sharp slopes or grade breaks.

FIGURE 4

ABSORPTION TRENCH SYSTEM FOR SLOPING GROUND
 (for slopes not greater than 15% and without sharp grade breaks)



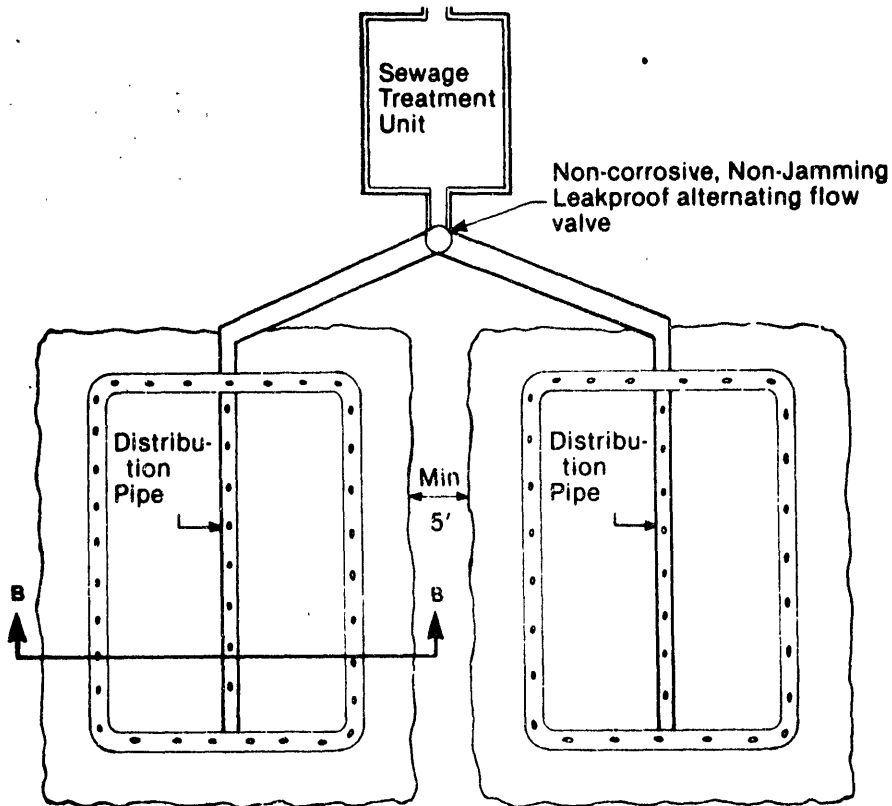
PLAN VIEW



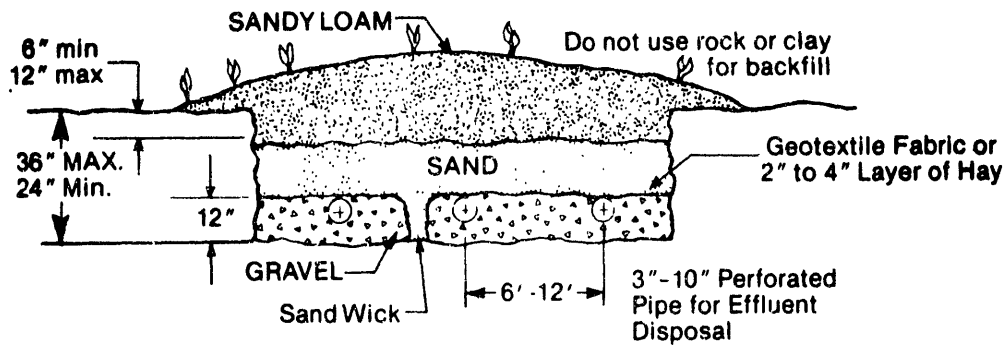
The septic tank and perforated piping shall be installed level while compacted earthen plugs shall separate the solid wall piping from the perforated piping and gravel. The interface between the sand and gravel layers shall be at the same elevation as the bottom of the 90 degree elbow.

(m) Figure 5. The following figure illustrates soil absorption bed details and is not intended to serve as an engineered design for construction purposes.

FIGURE 5
SOIL ABSORPTION BED
DETAILS



Plan View Of Dual Bed System

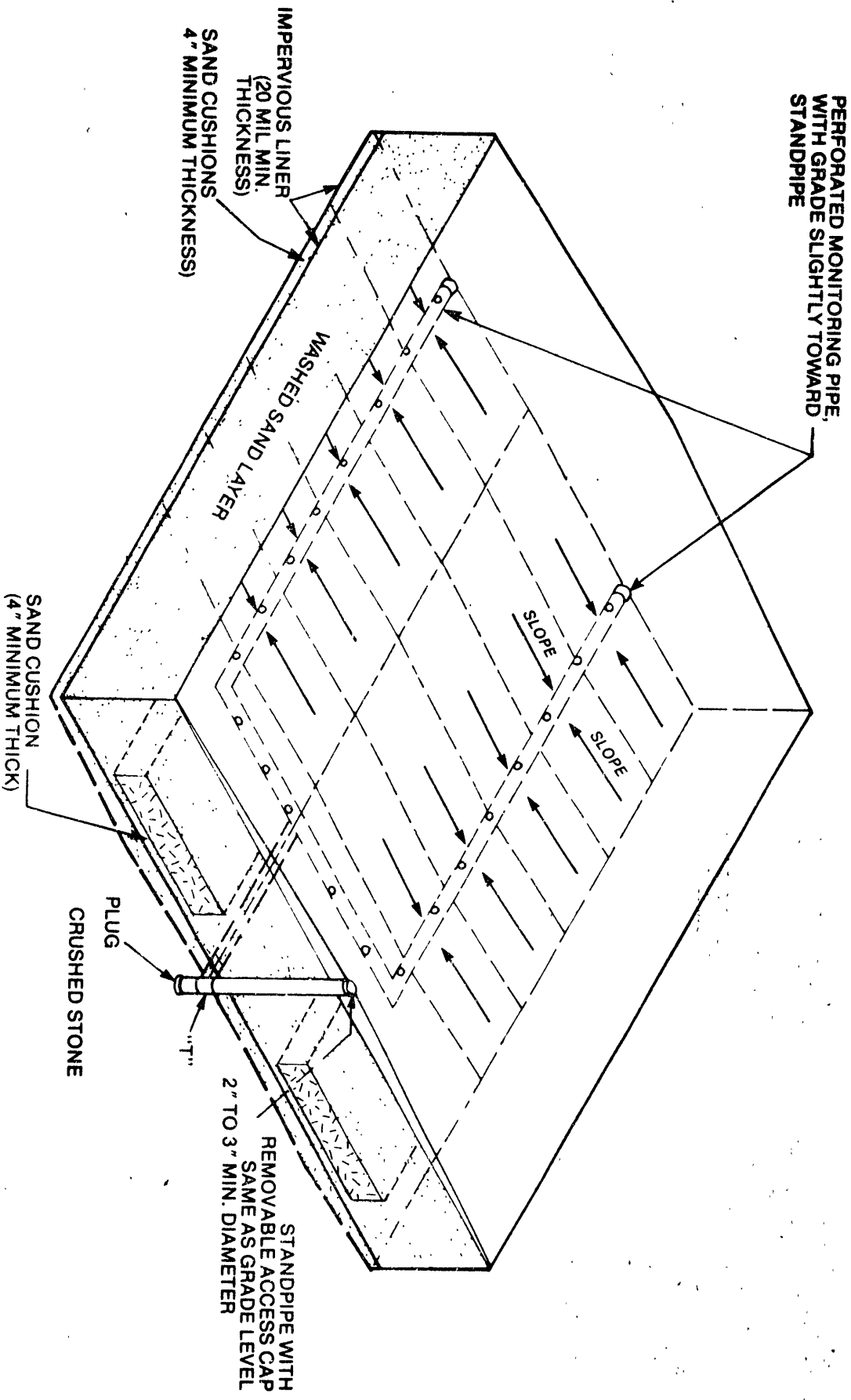


Section B-B

Not intended to serve as an engineered design for construction purposes.

(n) Figure 6. The following illustrates a leak monitor system and is not intended to serve as an engineered design for construction purposes.

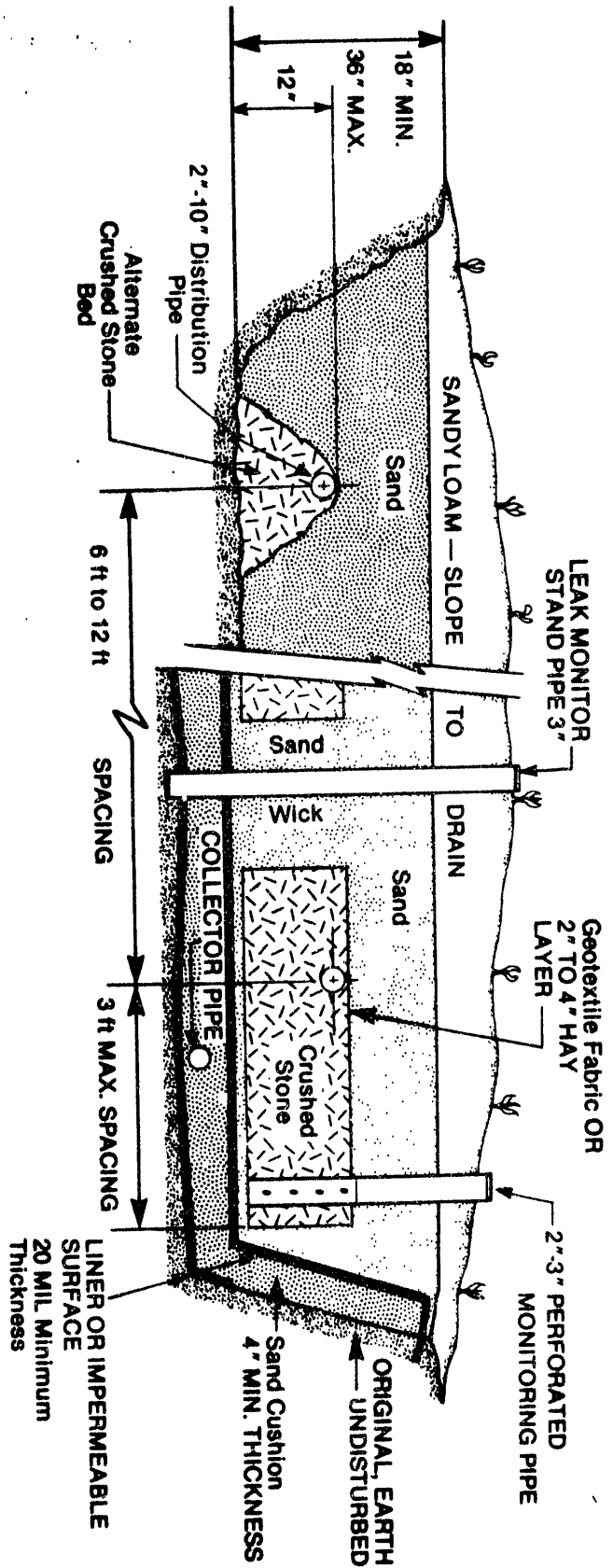
FIGURE 6
LEAK MONITOR SYSTEM
 (See Figure 7 for Cross-Section)



Not intended to serve as an engineered design for construction purposes.

(o) Figure 7. The following figure illustrates a typical evapotranspiration bed cross-section and is not intended to serve as an engineered design for construction purposes.

FIGURE 7
EVAPORATION BED
(Cross Section)



- NOTES:**
1. Where a liner is used over rock or other material that may damage liner, the liner shall be laid on a 4" protective sand cushion, and covered by a similar cushion.
 2. The crushed stone or gravel bed shall be made of 3/4" to 2" size hard stone.
 3. Sand columns, formed by a permeable material, shall extend completely through the crushed stone or gravel bed. Total column area shall be 10 to 15% of the bed area.
 4. The surface shall be mounded or sloped to drain storm water.
 5. The above drawing is for illustrative purposes; final construction design shall be site specific.
 6. Refer to Table VIII for definition of sand and sandy loam.
 7. Leak monitor collection pipe shall be wrapped with a filter cloth meeting the material requirements set forth in section 301.13(c)(6)(b).

Not intended to serve as an engineered design for construction purposes.

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 November 6, 1989.

TRD-8910748

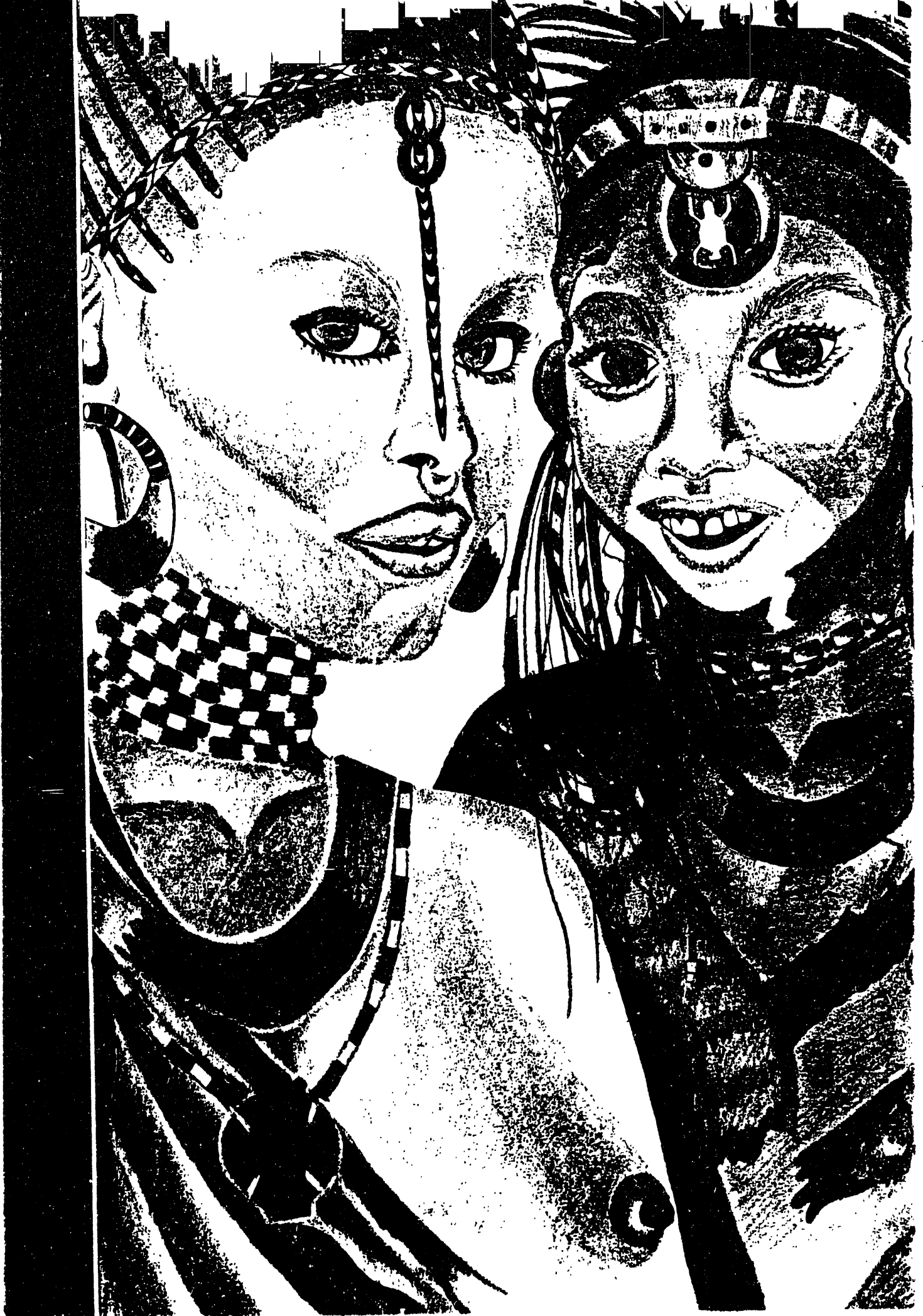
Robert A. MacLean, M.D.
Deputy Commissioner for
Professional Services
Texas Department of
Health

Effective date: November 27, 1989.

Proposal publication date: May 5, 1989.

For further information, please call: (512)
458-7542







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*.

Battleship Texas Advisory Board

Wednesday, November 15, 1989, 4 p.m. The Battleship Texas Advisory Board will meet in the offices of Liddell, Sapp, Zivley, Hill and LaBoon, 3200 Texas Commerce Tower, 32nd Floor Conference Room, 600 Travis, Houston. According to the agenda, the board will discuss various items with respect to the Battleship Texas restoration project and fundraising activities in connection therewith.

Contact: Robert D. Miller, 3200 Texas Commerce Tower, Houston, Texas 77002, (713) 226-1186.

Filed: November 8, 1989, 8:43 a.m.

TRD-8910788

Texas Bond Review Board

Friday, November 17, 1989, 10 a.m. The Staff Planning Meeting of the Texas Bond Review Board will be in the Sergeant's Committee Room, State Capitol, Austin. According to the agenda, the board will discuss approval of minutes; consider proposed issue; Texas Youth Commission lease-purchase-computer; and Texas Public Finance Authority revenue bonds for Texas School for the Deaf and State Board of Insurance. Other business.

Contact: Tom K. Pollard, Room 506, Sam Houston Building, Austin, Texas 78711, (512) 463-1741.

Filed: November 8, 1989, 4 p.m.

TRD-8910778

Wednesday, November 22, 1989, 10 a.m. The Texas Bond Review Board will meet in the Sergeant's Committee Room, State Capitol, Austin. According to the agenda, the board will discuss approval of minutes, consider proposed issues: Texas Youth Commission lease-purchase-computer; and Texas Public Finance Authority revenue bonds for Texas School for the Deaf and State Board of Insurance. Other business.

Contact: Tom K. Pollard, Room 506, Sam

Houston Building, Austin, Texas 78711, (512) 463-1741.

Filed: November 8, 1989, 4 p.m.

TRD-8910779

The Texas Education Agency

Thursday, November 16, 1989, 9 a.m. The Commission on Standards for the Teaching Profession Committee on Certification Programs and Requirements of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will discuss the report on national study "Turning Points: Preparing American Youth for the 21st Century": Work session on staffing requirements of standards; Individual programs (1987 Standards); Institutional Programs (1987 Standards); Consideration of requirement for the implementation of House Bill 2185, including responses from all conference; consideration of requirement for special education, including responses from fall conference; update on certification tests.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 8, 1989, 4:29 p.m.

TRD-8910785

Thursday, November 16, 1989, 11:15 a.m. and Friday, November 17, 1989, 8:30 a.m. The Commissioner's Advisory Committee for the Long Range Plan for Public Education of the Texas Education Agency will meet in the Paramount Room, Driskill Hotel, 604 Brazos, Austin. According to the agenda, the committee will discuss proposals for meeting goals 5-9 of the Long-Range Plan for Public Education, 1990-1994. On November 16, the following will be discussed: goal 5-finance; goal 6-parent involvement; and goal 7-community and business involvement. On November 17, there will be an expert session on restructuring the education system, an expert session on research and development, a discussion of goal 8-Research and Devel-

opment; and a discussion of goal 9-communication.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 8, 1989, 4:29 p.m.

TRD-8910784

Thursday, November 16, 1989, 2 p.m. The Commission on Standards for the Teaching Profession Committee on Standards and Procedures for Institutional Approval of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will review progress report on pilot program in generic special education; discussion of assignment requirements for pre-kindergarten teachers; report on pilot programs for master teacher development.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 8, 1989, 4:29 p.m.

TRD-8910786

Thursday, November 16, 1989, 3:15 p.m. The Commission on Standards for the Teaching Profession Membership Committee of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will review and recommend nominees for commission membership.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 8, 1989, 4:28 p.m.

TRD-8910782

Friday, November 17, 1989, 8:10 a.m. The Commission on Standards for the Teaching Profession Executive Committee of the Texas Education Agency will meet in Room 1-110, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will review agenda items with committee chairmen.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 8, 1989, 4:29 p.m.

TRD-8910787

Friday, November 17, 1989, 9 a.m. The Commission on Standards for the Teaching Profession of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the commission will report on: Expression of appreciation for participation of members in fall conference; report from the committee on certification programs and requirements; report from the committee on standards and procedures for institutional approval; report from the committee on membership; report from the executive committee.

Contact: Edward M. Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337.

Filed: November 8, 1989, 4:28 p.m.

TRD-8910783

Employees Retirement System of Texas

Thursday, November 16, 1989, 1 p.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas will meet at the Brown-Heatley Building, Room 1410, 4900 North Lamar, Austin. According to the agenda, the committee will recognize visitors and guests; discuss approval of minutes from previous meeting; appointment of subcommittee on communications; report and recommendation from subcommittee on HMO standardization of benefits; discussion and recommendations on cost containment and other related issues.

Contact: James W. Sarver, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431, ext. 217.

Filed: November 7, 1989, 2:34 p.m.

TRD-8910703

Friday, November 17, 1989, 8:30 a.m. The Group Insurance Advisory Committee of the Employees Retirement System of Texas will meet at the Brown-Heatley Building, Room 1410, 4900 North Lamar, Austin. According to the agenda, the committee will recognize visitors and guests; continuation of discussion and recommendations on cost containment and other related issues.

Contact: James W. Sarver, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431, ext. 217.

Filed: November 7, 1989, 2:23 p.m.

TRD-8910702

Texas Department of Health

Saturday and Sunday, November 18-19, 1989, 9 a.m. The Texas Radiation Advisory Board Workshop of the Texas Department of Health will meet at the Stouffer Austin Hotel, 9721 Arboretum Boulevard, Austin. According to the agenda, the board will discuss issues concerning United States Regulatory Commission/State Relations; United States Environmental Protection Agency/State Relations; United States Department of Energy/State Relations; waste disposal; naturally occurring radioactive materials; transportation; epidemiology; non-ionizing radiation; funding; and Bureau of Radiation Control Activities/Operations.

Contact: L. Don Thurman, 1100 West 49th Street, Austin, Texas 78756, (512) 835-7000.

Filed: November 7, 1989, 2:08 p.m.

TRD-8910697

Thursday, November 30, 1989, 10 a.m. The Advisory Committee on Personal Care Facilities of the Texas Department of Health will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda, the committee will review draft of personal care facility licensing standards; and other items of interest not requiring committee action.

Contact: Richard Butler, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: November 8, 1989, 1:56 p.m.

TRD-8910769

Texas Department of Human Services

Thursday, November 16, 1989, 1 p.m. The Children's Trust Fund Council of the Texas Department of Human Services will meet at the Hyatt Regency DFW, International Parkway, DFW Airport, Dallas. According to the agenda, the council will discuss public awareness campaign report; report on agency review; legislative developments; summary and calendar.

Contact: Janie Fields, 8140 MoPac, Building 4, Suite 200, Austin, Texas 78759, (512) 345-9218.

Filed: November 8, 1989, 12:22 p.m.

TRD-8910754

Friday, November 17, 1989, 8:00 a.m. The CPS/Child Welfare Board Joint Committee of the Texas Department of Human Services will meet at the Guest Quarters Hotel, 303 West 15th Street, Bluebonnet Room, Austin. According to the agenda, the committee will discuss approval of minutes; reorganization/program update; education committee report; public information com-

mittee report; legal committee report; issues committee report; risk assessment update; ad hoc committee report.

Contact: Pat Devin, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3313.

Filed: November 8, 1989, 12:21 p.m.

TRD-8910753

State Board of Insurance

Wednesday, November 15, 1989, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board will discuss a petition for exemption from membership in the Texas Workers' Compensation Assigned Risk Pool for insurance companies in conservatorship. Emergency action on 28 TAC 7.32. Proposed action on repeal of 28 TAC 1.301, new 28 TAC 1.301 and amendment to 28 TAC 1.302. Board Orders on several different matters as itemized on the complete agenda. Personnel matters. Pending and contemplated litigation. Solvency matters. Revisions to personnel manual.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: November 7, 1989, 2:25 p.m.

TRD-8910699

Wednesday, November 15, 1989, 3 p.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board will be meeting with the Attorney General's Office concerning pending and contemplated litigation.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: November 7, 1989, 2:25 p.m.

TRD-8910698

Monday, November 20, 1989, 3 p.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto, Austin. According to the agenda, the board will reopen the public hearing on commercial automobile insurance rate adjustments.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: November 8, 1989, 1:52 p.m.

TRD-8910759

Legislative Budget Board

Monday, November 13, 1989, 2 p.m. The Legislative Budget Board met in Room 310, State Capitol, Austin. According to the emergency revised agenda, the board considered the Governor's budget execution proposals and other business. Following the public hearing, the board took action as it

determined to be appropriate. Added to the agenda was a request by State Purchasing and General Services Commission for the board's approval to purchase and renovate a records and equipment warehouse for use by the State Board of Insurance. The emergency status was necessary because the request was not received in time to give the standard notice for this meeting, therefore, it was taken up on an emergency basis.

Contact: Jim Oliver, Room 207-A, State Capitol, Austin, Texas 78711, (512) 463-1166.

Filed: November 7, 1989, 4:00 p.m.

TRD-8910717

Texas Department of Licensing and Regulation

Wednesday, November 29, 1989, 9 a.m. The Manufactured Housing Division of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E. O. Thompson Building, 10th Floor Conference Room, Austin. According to the agenda, the division will consider suspension, revocation or denial of respondent's Appletree Homes, license/registration for violation of the department's Manufactured Housing rules and regulations.

Contact: Jack Shriver, 920 Colorado, Austin, Texas 78711, (512) 463-3128.

Filed: November 7, 1989, 1:32 p.m.

TRD-8910694

Thursday, November 30, 1989, 9 a.m. The Air Conditioning and Refrigeration Section of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E. O. Thompson Building, 10th Floor Conference Room, Austin. According to the agenda, the section will consider suspension, revocation or denial of respondent's, Hien Trong Luong, license/registration for violation of the department's air conditioning and refrigeration contractor rules and regulations.

Contact: Jack Shriver, 902 Colorado, Austin, Texas 78711, (512) 463-3128.

Filed: November 7, 1989, 1:32 p.m.

TRD-8910693

Thursday, November 30, 1989, 10:30 a.m. The Air Conditioning and Refrigeration Section of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E. O. Thompson Building, 10th Floor Conference Room, Austin. According to the agenda, the section will consider suspension, revocation or denial of respondent's, Timothy Stevenson, license/registration for violation of the department's air conditioning and refrigeration contractor rules and regulations.

Contact: Jack Shriver, 920 Colorado, Austin, Texas 78711, (512) 463-3128.

Filed: November 7, 1989, 1:33 p.m.

TRD-8910695

Board of Nurse Examiners and Board of Vocational Nurse Examiners

Thursday, November 16, 1989, 2 p.m. The BNE Operations Committee and BVNE Budget Committee of the Board of Nurse Examiners (BNE) and Board of Vocational Nurse Examiners (BVNE) will meet in the Conference Room, Suite 104, 9101 Burnet Road, Austin. According to the agenda, the committees will meet with representatives from Texas Peer Assistance Program for Impaired Nurses (TPAPIN) on Thursday, November 16. The Purpose of the meeting is to discuss TPAPIN's proposal for a funding increase.

Contact: Louise Waddill, R.N., Ph.D., Box 140466, Austin, Texas 78714, (512) 835-8650.

Filed: November 8, 1989, 10:36 a.m.

TRD-8910757

Texas State Board of Public Accountancy

Tuesday, November 14, 1989, 1 p.m. The Texas State Board of Public Accountancy will have an emergency public hearing at 1033 La Posada, Suite 340, Austin. According to the agenda, the board will have a public hearing on complaint number 87-03-07L. The emergency status was necessary because it is the only time available for hearings officer.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: November 8, 1989, 1:56 p.m.

TRD-8910770

Friday, November 17, 1989, 9 a.m. The Behavioral Enforcement Committee of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the agenda, the committee will discuss status report: October; recommendations regarding specific licensees complaints-licensees: complaint numbers 89-09-02L; 89-08-07L; 89-08-06L; 89-08-10L; 89-09-02L; 89-09-10L; 89-09-01L; discussion items: Berry; Canup; George; Hurt; Kenmure; Lundeen; McElreath; Ratcliffe; Rodgers; Yancey; Zellers; review of backlog of complaints.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: November 8, 1989, 1:56 p.m.

TRD-8910771

Friday, November 17, 1989, 11 a.m. The Informal Conference of the Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the agenda, the conference will discuss complaint number 88-05-13L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: November 8, 1989, 1:55 p.m.

TRD-8910772

Tuesday, November 21, 1989, 9:30 a.m. The Texas State Board of Public Accountancy will have a public hearing at 1033 La Posada, Suite 340, Austin. According to the agenda, the board will have a public hearing on complaint numbers 87-07-52L and 87-07-53L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: November 8, 1989, 1:57 p.m.

TRD-8910768

Tuesday, December 5, 1989, 9:30 a.m. The Texas State Board of Public Accountancy will have a public hearing at 1033 La Posada, Suite 340, Austin. According to the agenda, the board will have a public hearing on complaint numbers 86-01-18L and 88-04-12L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: November 8, 1989, 1:57

TRD-8910767

Public Utility Commission of Texas

Monday, November 20, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the hearings division will have a rescheduled hearing on the merits in Docket Number 8667; application of GTE Southwest, Inc. for approval of 911 tariff amendments, including adoption of customer specific rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 8, 1989, 2:20 p.m.

TRD-8910761

Tuesday, November 21, 1989, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the hearings division will have a prehearing conference in Docket Number 9124; application of Southwestern Bell Telephone Company to provide for C. O. Lan Service for Birdville

Independent School District.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 8, 1989, 2:20 p.m.

TRD-8910762

Thursday, November 30, 1989, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda, the commission will have a prehearing conference in Docket Number 9128; application of Central Texas Telephone Cooperative to revise tariff pursuant to Public Utility Commission substantive rule 23.24(b)(1).

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 8, 1989, 2:20 p.m.

TRD-8910760

Sunset Advisory Commission

Thursday and Friday, November 16 and 17, 1989, 9 a.m. The Sunset Advisory Commission will meet in the Lieutenant Governor's Committee Room, Room 220, Capitol Building, Austin. According to the agenda, on Thursday, November 16th the commission will hear agency testimony on operations of State Purchasing and General Services Commission and testimony on operations of Texas Department of Highways and Transportation. On Friday, November 17th, the commission will hear agency testimony relating to the operations of the Texas State Bar and Board of Law Examiners.

Contact: Susan Kinney, 105 West 15th Street, Room 305, Austin, Texas 78711, (512) 463-1300.

Filed: November 8, 1989, 3:24 p.m.

TRD-8910775

Texas State Technical Institute

Saturday, November 18, 1989, 10 a.m. The Board of Regents of the Texas State Technical Institute will meet in the Westin Paso Del Norte Hotel, El Paso. According to the agenda, the board will discuss the proposed minute orders for the: policy committee for instruction and student services; policy committee for facilities; policy committee for fiscal affairs; policy committee for human resources. The committee of the Whole led by Chancellor Groves will discuss various committees and strategic planning for Texas State Technical Institute.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: November 8, 1989, 8:45 a.m.

TRD-8910774

Sunday, November 19, 1989, 9 a.m. The Board of Regents of the Texas State Technical Institute will meet in the Westin Paso Del Norte Hotel, El Paso. According to the agenda, the board will discuss approval of the following proposed minute orders given by the regents: policy for new instructional program applications, declaration of building 5602 at TSTI-Amarillo as not needed for educational and training purposes, constitution and bylaws of faculty committee for TSTI-Sweetwater, manufacturing technology program at TSTI-Sweetwater, certified medical transcription program at TSTI-Sweetwater Abilene Extension, requests for budget change, lease agreement with Village Park Church for building 2512 at TSTI-Amarillo, approve plans for student center building and gymnasium at TSTI-Harlingen, award contract(s) for construction of student center building and gymnasium at TSTI-Harlingen, lease agreement for facilities at the Breckenridge Extension Center, resolution honoring Gerald Phariss, appointment of Mary Ann Roe, dean for institutional advancement at TSTI-Waco, appointment of Steve Malbrough, manager of instructional support services at TSTI-Waco, appointment of Robert Musgrove, Dean of Instruction at TSTI-Sweetwater.

Contact: Theodore A. Talbot, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: November 8, 1989, 8:45 a.m.

TRD-8910773

The Texas A&M University System

Monday, November 13, 1989, 2 p.m. The Board of Regents of The Texas A&M University System met in the Board of Regents Meeting Room, College Station. According to the agenda, the board had this special telephonic meeting to consider the appointment of the president of Prairie View A&M University and to receive bids for the renovation of the president's home on the campus of Prairie View A&M University.

Contact: Vickie E. Burt, Texas A&M University System, College Station, Texas 77843, (409) 845-9603.

Filed: November 8, 1989, 10:38 a.m.

TRD-8910756

University Interscholastic League

Monday, November 13, 1989, 1 p.m. The Waiver Review Board of the University Interscholastic League met at the Thompson Conference Center, Room 2. 110, 26th and Red River Streets, University of Texas

Campus, Austin. According to the agenda, the board discussed appeal of waiver decision to determine student eligibility.

Contact: Bob Young, P.O. Box 8028, UT Station, Austin, Texas 78713-8028, (512) 471-5883.

Filed: November 8, 1989, 11:10 a.m.

TRD-8910749

Texas Water Development Board

Thursday, November 16, 1989, 9 a.m. The Texas Water Development Board will meet at 1700 North Congress Avenue, Room 118, Austin. According to the agenda, the board will consider: approval of minutes; development fund manager's report; necessary actions relating to issuance and sale of \$4,690,000 Texas Water Development Bonds, taxable series 1989C; extension of loan commitments for cities of Prairie View, Arcola, San Saba and Victoria County WCID #2; financial assistance to cities of Runge, Bellaire, Austin, Devine, Greater Texoma Utility Authority (Gunter), and Upper Trinity Reg. Water District (Little Elm); requests to amend loan conditions from Wickson Creek SUD and City of Harlingen; 1990 SRF intended use plan, priority list, state match, lending rate and filing for federal funds; authorizing contracts and funds reallocation to study the Edwards Aquifer; and executive session and open meeting to appoint members to San Jacinto River Authority and Lower Neches Valley Authority Board of Directors.

Contact: G. E. Kretzschmar, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: November 8, 1989, 2:03 p.m.

TRD-8910766

West Texas State University

Tuesday, November 14, 1989, 11 a.m. The Board of Regents of West Texas State University will meet at Old Main 317, West Texas State University, Canyon. According to the agenda, the board will discuss finance and administrative services: budget changes; construction contracts: change orders; permission to bid and award. Non-faculty grievance policy for exempt employees; non-faculty grievance policy for classified employees; confirmation of contracts. Panhandle Plains Historical Museum: authority to execute catering agreements; policy governing use of building. Academic affairs items: resignations employment. Grievance appeals: Leon Trekeil and Philip Isett. Name of college and action thereon. Executive session.

Contact: Texas Smith, West Texas State University, Canyon, Texas 79016, (806) 656-2100.

Filed: November 7, 1989, 10:57 a.m.

TRD-8910701

Tuesday, November 14, 1989, 11 a.m. The Board of Regents of West Texas State University will meet at Old Main 317, West Texas State University, Canyon. According to the revised agenda, the board will discuss finance and administrative services: budget changes; construction contracts: change orders; permission to bid and award. Non-faculty grievance policy for exempt employees; non-faculty grievance policy for classified employees; confirmation of contracts. Panhandle-Plains Historical Museum: authority to execute catering agreements; policy governing use of building. Executive session. Academic affairs items; resignations; employment. Grievance appeals: Leon Trekell; Philip Isett. Name of college and/or segment of building and action thereon.

Contact: Texas Smith, West Texas State University, Canyon, Texas 79016, (806) 656-2100.

Filed: November 7, 1989, 10:57 a.m.

TRD-8910700

Regional Meetings

Meetings Filed November 7, 1989

The Austin Transportation Study, Policy Advisory Committee will meet at the Joe C. Thompson Conference Center, Room 2.102, 26th and Red River Streets, Austin, November 14, 1989, at 6:00 p.m. Information may be obtained from Joseph P. Gieselman, 811 Barton Springs Road, #700, Austin, Texas. (512) 472-7483.

The Denton Central Appraisal District, Board of Directors will meet at 3911 Morse Street, Denton, November 16, 1989, at 4:00 p.m. Information may be obtained from John D. Brown, 3911 Morse Street, Denton, Texas 76205, (817) 566-0904.

The Denton Central Appraisal District, Appraisal Review Board will meet at 3911 Morse Street, Denton, November 17, 1989, at 9:00 a.m. Information may be obtained from John D. Brown, 3911 Morse, Denton, Texas 76205, (817) 566-0904.

The East Texas Council of Governments, East Texas Regional Review Committee will meet at the Inn Club, Community Inn, Kilgore, November 21, 1989, at 8:45 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Golden Crescent Service Delivery Area met with an emergency revised agenda at 301 Colony Creek Drive, Victoria, November 8, 1989, at 6:30 p. m. The emergency status was necessary to replace secretary and hear nominating committee report. Information may be obtained from

Charles R. Steele, P.O. Box 164, Victoria, Texas.

TRD-8910686

Meetings Filed November 8, 1989

The Education Service Center Region XI, Board of Directors will meet at 3001 North Freeway, Fort Worth, November 21, 1989, at 12:00 noon. Information may be obtained from R. P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311.

The Ellis County Appraisal District will meet at 406 Sycamore Street, Waxahachie, November 16, 1989, at 7:00 p.m. Information may be obtained from Russell A. Garrison, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Golden Crescent Regional Review Committee will meet in the GCRPC Board Room, Regional Airport, Building 102, Victoria, December 6, 1989, at 10:00 a.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Golden Crescent Service Delivery Area met with an emergency revised agenda at 301 Colony Creek Drive, Victoria, November 8, 1989, at 6:30 p. m. The emergency status was necessary to enable the board to vote on vital issues which were not specified in the original agenda. Information may be obtained from Sandy Heiermann, P.O. Box 164, Victoria, Texas 77902.

The Guadalupe-Blanco River Authority, Board of Directors will meet at 933 East Court Street, Seguin, November 16, 1989, at 10 a.m. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156, (512) 379-5822.

The Hays County Appraisal District, Appraisal Review Board will meet at 632 "A" East Hopkins-Municipal Building, San Marcos, November 15, 1989, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 "A" East Hopkins, Municipal Building, San Marcos, Texas 78666, (512) 754-7400.

The Heart of Texas Council of Governments, Executive Committee will meet at 300 Franklin, Waco, November 16, 1989, at 10 a.m. Information may be obtained from Mary McDow, 300 Franklin, Waco, Texas 76701, (817) 756-7822.

The Heart of Texas Council of Governments, Private Industry Council will meet at the Texas State Technical Institute, Waco Campus, Waco, November 16, 1989, at 11:30 a.m. Information may be obtained from Mary McDow, 300 Franklin, Waco, Texas 76701, (817) 756-7822.

The Hockley County Appraisal District, Board of Directors will meet at 1103-C

Houston Street, Levelland, November 13, 1989, at 7:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, 1103-C Houston, Levelland, Texas 79336, (806) 894-9654.

The Jones County Appraisal District, Board of Directors will meet in the District's Office at 1137 East Court Plaza, Anson, November 16, 1989, at 8:00 a.m. Information may be obtained from John Steele, 1137 East Court Plaza, Anson, Texas, (915) 823-2422.

The Limestone County Appraisal District, Board of Directors will meet in the Meeting Room, Limestone County Courthouse, Groesbeck, November 15, 1989, at 5:00 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The Nolan County Central Appraisal District, Board of Directors will meet at the Nolan County Courthouse, Suite 317A, Sweetwater, November 14, 1989, at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421.

The Panhandle Ground Water Conservation District #3, Board of Directors had a public meeting at the Water District Office, 300 South Omohundro, White Deer, November 13, 1989, at 7:00 p.m. Information may be obtained from Gary L. Walker, P.O. Box 637, White Deer, Texas 79097, (806) 883-2501.

The Swisher County Appraisal District, Board of Directors met at 130 North Armstrong, Tulia, November 13, 1989, at 8:00 a.m. Information may be obtained from Rose Lee Powell, Box 8, Tulia, Texas 79088, (806) 995-4118.

The Tyler County Appraisal District, Board of Directors will meet at 806 West Bluff, Woodville, November 16, 1989, at 4:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

TRD-8910719

Meetings Filed November 9, 1989

The Mental Health Mental Retardation Regional Center of East Texas, Board of Trustees will meet at 2323 West Front Street, Board Room, Tyler, November 15, 1989, at 4:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (214) 597-1351.

The Wood County Appraisal District, Board of Directors will meet at 217 North Main, Conference Room, Wood County Appraisal District, Quitman, November 16, 1989, at 1:30 p.m. Information may be obtained from W. Carson Wages, 217 North Main, Quitman, Texas.

TRD-8910781

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Request for Pre-Proposals

The Texas Agricultural Diversification Board and Texas Department of Agriculture announce the extension of the pre-proposals deadline to fund applied research and innovation projects, business training, and support service programs designed to address Texas' Agricultural needs and opportunities. The Agricultural Diversification Matching Grant Program was authorized by House Bill 49, 70th Legislature, Second Called Session, 1987. The purpose of the program is to support projects sponsored by nonprofit organization which will stimulate increased economic activity within Texas' food and agriculture industries. A call for pre-proposals for the 1990 fiscal year was mailed out on September 25, 1989, and included a November 6, 1989, deadline for submission of pre-proposals.

Funding pre-proposals will be accepted in three categories. Research and innovation (technology transfer). Grants up to \$30,000 will be considered for applied research and innovation leading to organizational or marketing improvements in business based on agriculture or to the commercialization of new crops, new agricultural products, or new production processes. A grant recipient under this grant must match the amount of the state grant with an equal amount of other money, with at least one-half of the matching money coming from the private sector. Business assistance (training). Grants up to \$30,000 will be considered for business assistance, including training, to increase the capabilities of community and regional organization to provide training and assistance to new and expanding businesses based on agriculture. A grant recipient under this grant program must match the amount of the state grant with an equal amount of other money. Small business incubators. Grants will provide up to \$100,000 to provide seed money for self-financing small business incubators. These incubators shall provide business services to small enterprises that process and market agricultural crops in this state and that produce alternative agricultural crops in this state.

A grant recipient under section three the incubator section must match the amount of the state grant with assets valued at three dollars for every dollar of the state grant. The state grant must be primarily for professional services. The local matching share may be in the form of land, buildings, business assistance, and dedicated loan pools as well as cash contributions.

Funds are intended to be used for new activities or the expansion of qualifying activities. Pre-proposals must have practical near-term commercial application involving new or alternative crops and technologies, production, processing, and marketing practices which will stimulate expanded agricultural development, economic activity, and employment growth. A recipient of a grant must be a non profit regional organization or nonprofit community, such as a university, community college or council of government, or other institutions affiliated with a small business in an eligible project.

Pre-proposals will be evaluated on the basis of conformity to the objectives and criteria outlined in its content and the cost effectiveness of the pre-proposal activity.

To obtain a complete copy of the pre-proposal contact Alice Reynolds, Administrator, Texas Diversification Program, Texas Department of Agriculture, P. O. Box 12847, 1700 North Congress Avenue, Stephen F. Austin Building, 10th Floor, Room 1001, Austin, Texas 78711, (512) 463-7624. A copy of the request for pre-proposals may be obtained by calling or writing the department.

Pre-proposals may be delivered by mail or in person to the address stated previously. To be considered for funding, pre-proposals must be received no later than 4 p.m. on Monday, November 27, 1989. Pre-proposals received after that time will not be considered.

Finalists of the pre-proposal process will be advised by Friday, January 5, 1990, for re-submission of a complete request for proposal (RFP) by Thursday, February 15, 1990.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910896 Dolores Alvarado Hibbe
Director of Hearings
Texas Department of Agriculture

Filed: November 7, 1989

For further information, please call: (512) 463-7588

Texas Department of Criminal Justice Request for Proposal

Pursuant to the authority granted by Article 1, House Bill 2335, 71st Legislature, and the Government Code, Texas Civil Statutes, §492.001, State of Texas, the Texas Department of Criminal Justice, Institutional Division hereby requests all interested parties to submit proposals for a study of the information systems currently used by the Institutional Division (formerly the Texas Department of Corrections), the Board of Pardons and Paroles Division (formerly the Board of Pardons and Paroles), and the Community Justice Assistance Division (formerly the Texas Adult Probation Commission). All three divisions currently have separate information systems.

The Texas Board of Criminal Justice, before authorizing further expansion of existing system, has ordered that an independent, unbiased study be made of all existing hardware and software architectural platforms. This study is to ensure that all additional expansions are in the best interest of TDCJ and are in keeping with the provision of House Bill 2335 relative to the computerized criminal history record information system to be maintained by DPS and the planned AFIS (Automatic Fingerprint Identification System).

Current Environment. The Institutional Division employs IBM architecture and has just completed a major hardware upgrade to service the additional capacity currently being constructed and occupied. The Board of Par-

sons and Paroles Division employs UNISYS architecture and has indicated a need for increased capacity to handle its client load. The Community Justice Assistance Division employs Data General architecture and is in need of additional processing capabilities to handle its responsibilities in the growing criminal justice system.

Results. The results of the study must be completed within 45 days from award of contract and must include the following: assessment of the cost effectiveness of sharing information processing resources (i.e. staff, software products, telecommunications network, processors, etc.); estimate of the agency productivity gains if a single information system existed that would support data and image processing as opposed to maintaining three separate systems; recommendation of a hardware and software architectural platform for all existing and future applications for each division; recommendation of any immediate expansion or upgrade that should take place to avoid potential disruption of offenders moving through the criminal justice system.

Consultants Qualifications. All respondents to the RFP must have a minimum of seven years experience in the field of mainframe information processing. Under no circumstances shall a respondent to this RFP or an employee thereof ever have been employed by any of the three divisions of the TDCJ under their present or prior agency names. Under no circumstances shall a respondent or an employee thereof ever have been employed by UNISYS, Data General, IBM, or any mainframe manufacturer employing IBM architecture. Employees of former companies not previously named but whose products and resources were absorbed by former named or referenced companies due to buyout or merger with or without name change are also declared ineligible to respond to this RFP.

Deadline. All proposals must be submitted by 12 noon of the 30th day from the date this notice is posted. These bids will be presented to the Texas Department of Criminal Justice for final decision. For more information please contact Bill McCray, Deputy Director for Finance, Texas Department of Criminal Justice, Institutional Division, P.O. Box 99, (Spur 59) Room 215, Huntsville, Texas 77342-0099, (409) 294-2107.

The evaluation of the proposals will be based upon the expertise of the applicant, experience of the applicant in dealing with similar projects, projected time schedule for the project, financial assurance of the firm, and efficiency of scope of service presented.

Issued in Huntsville, Texas on November 7, 1989.

TRD-8910720 Michael R. Davis
Assistant General Counsel
Texas Department of Criminal Justice

Filed: November 8, 1989

For further information, please call: (409) 294-6007.

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Governor's Office of Budget and Planning

Consultant Proposal Request for Construction and Management Contractor

This request for consultant services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

Notice of Invitation. The Energy Management Center (EMC) in the Governor's Office of Budget and Planning invites proposals from qualified firms, agencies, institu-

tions, or individuals for a Construction Management Contractor to monitor the design and construction implementation of Energy Cost Reduction Measures (ECRMs) recommended under the LoanSTAR (Save Taxes And Resources) retrofit demonstration loan program for state agencies, local governments and school districts. The consultant(s) selected will be responsible for management of all phases of the implementation process, including design document review, retrofit installation review, and system performance review.

Services to be Performed. The Construction Management Contractor (CMC) will: verify that the energy cost reduction measures are designed according to the original engineering audit recommendations through all required phases of the design process; assure that the project is bid in accordance with the contract documents and that all conditions of the contract documents relative to construction of the energy related projects are complied with; recommend approval or disapproval of proposed project changes and cost-related change orders; submit written verification that the monitoring sub-contractor has installed the meters prescribed by the metering plan and has obtained the necessary data prior to implementation of the ECRMs; verify that correct materials and equipment are acquired for implementation of the ECRMs; provide written verification substantiating amount of completion prior to release of funds; and inspect installation of ECRMs and verify in writing that the performance is as specified.

Contact Person. For questions concerning this project, contact Lee Gros, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711; (512) 463-1931.

Closing Date. Seven copies of the sealed proposals should be sent to Kim Munyon, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711. If the proposals are sent by overnight mail or are hand delivered, the street address is Sam Houston Building, Room 620, 201 East 14th Street, Austin, Texas 78701.

Proposals must be received by 3 p.m. on December 18, 1989. Proposals received after that time will not be considered.

Selection Criteria. The specific criteria to be used in selecting the consultant are as follows:

1. ability to assign sufficient qualified and experienced personnel to the project, including a professional engineer or architect, licensed in Texas;
2. previous work experience directly related to this type of project, including:
 - a. construction management, inspection, observation; and
 - b. design and/or construction of energy related systems for buildings;
3. applicability and effectiveness of methodology proposed for assuring project performance;
4. demonstrated ability to track construction projects of various types and sizes;
5. applicability and effectiveness of demonstrated tracking system; and
6. quality and organization of the proposal itself.

Award will not necessarily be made to the bidder offering the lowest price; selection will be based on the proposer's ability to satisfy the criteria listed above. The EMC reserves the right to negotiate both budget and scope of work with the finalist(s). The EMC reserves the right to

reject any or all proposals and is under no legal requirement to execute a contract on the basis of this consultant proposal request.

Final selection of the contractor(s) will be based on the recommendations of a review committee. If two or more proposals are ranked so closely that a decision cannot be made, the review committee may request finalists to provide additional information or to meet with EMC staff in Austin prior to final selection of contractor(s). No respondent, however, will be reimbursed for any costs incurred in the preparation, submission, or clarification of a proposal.

Issued in Austin, Texas on November 4, 1989.

TRD-8910721 Sheila W. Beckett
Director
Governor's Office of Budget and Planning

Filed: November 8, 1989

For further information, please call: (512) 463-1931.

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Texas Department of Human Services
Notice of Award

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) announces this notice of consultant contract award. The invitation for consultant proposal was published in the June 9, 1989, issue of the *Texas Register* (14 TexReg 2922).

Description of services. The contractor will provide the following services: research on reimbursement methodologies for long term care facilities; analyses of a variety of patient data using generally accepted and creative approaches to research; consultation to the department regarding organizational and transitional issues; integrating multiple outside consulting studies and recommendations; and evaluating the department's current performance measurement systems.

Name of consultant. The contract was awarded to Robert Godbout, Ph. D., P.O. Box 4358, Austin, Texas 78765.

Term and amount of the contract. The contract period is October 16, 1989-August 31, 1991. Total value of the contract is \$100,000.

Study completion date. All reports will be due no later than August 31, 1991.

Issued in Austin, Texas on November 8, 1989.

TRD-8910727 Cathy Rossberg
Agency Liaison, Policy Development
Services
Texas Department of Human Services

Filed: November 8, 1989.

For further information, please call: (512) 450-3765

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In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services (DHS) announces this notice of consultant contract award. The invitation for consultant proposal was published in the September 12, 1989, issue of the *Texas Register* (14 TexReg 4649).

Description of services. The contractor will provide the following services: application of multivariate statistical methods and interpretation of results, including analyses of nursing home patient assessment data and time study data utilizing Autogroup cluster analysis to identify appropriate

case mix groupings. Assistance with personal computer software design and programming to support the development of a nursing home management information system. Assistance with mainframe computer software design and programming to support the development of a nursing home management information system. Assistance with the maintenance of a statewide client assessment, review and evaluation (CARE) data entry system.

Name of consultant. The contract was awarded to David Malitz, 4203 Sendero Drive, Austin, Texas 78735.

Term and amount of the contract. The contract period is November 1, 1989-August 31, 1991. Total value of the contract is \$20,000.

Study completion date. All reports will be due no later than August 31, 1991.

Issued in Austin, Texas on November 8, 1989.

TRD-8910728 Cathy Rossberg
Agency Liaison, Policy Development
Services
Texas Department of Human Services

Filed: November 8, 1989.

For further information, please call: (512) 450-3765

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State Board of Insurance
Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for incorporation in Texas of Richard Thompson a domestic third party administrator. The home office is in Austin.
2. Application for incorporation in Texas of Warren Employee Benefits Company, Inc., a domestic third party administrator. The home office is in Dallas.
3. Application for incorporation in Texas of National Insurance Group, Inc., a domestic third party administrator. The home office is in Pasadena.
4. Application for incorporation in Texas of Karl Singer and Associates, a domestic third party administrator. The home office is in Dallas.

Issued in Austin, Texas, on November 3, 1989.

TRD-8910643 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: November 6, 1989

For further information, please call: (512) 463-6327

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Texas State Library and Archives
Commission

Consultant Proposal Request

The Texas State Library and Archives Commission, under authority of its enabling Act, Texas Civil Statutes, Article 5436, announces a request for proposals from its Library Development Division. Since proposals may be submitted requiring consultant services, notice is hereby given as required under Texas Civil Statutes, Article 6252-11c.

Description of Program Proposal. The State Library is soliciting proposals to implement projects involving cooperation between or among libraries of more than one type. These multitype library cooperative projects may encom-

pass the planning, establishment, expansion, or operation of local, regional, state, or interstate cooperative networks of libraries. The projects should provide for participation among school, public, academic, and special libraries and information centers. Although the proposals may require the delivery of consulting or human services to the participating libraries, some expenditures are not allowed.

Evaluation Process. The process of application review will involve the Library Services and Construction Act Advisory Council and the State Library staff. The grant application guidelines detail the weighted criteria and the process to be used to evaluate the applications. The final decisions regarding the awarding of the grants will be made by the Texas State Library and Archives Commission.

Eligible Applicants. Grants may be awarded to the city or county governing authorities of Texas system member public libraries, academic institutions, special libraries, school districts, and incorporated or nonprofit organizations or consortia of libraries. Documentation must be included with the grant application indicating that two or more types of libraries will significantly participate in and be impacted by the proposed project.

Deadline for Submission of Proposals. Proposal applications must be received by the end of the business day (5 p.m.) on March 15, 1989. Applications submitted by telefacsimile must be received by the same deadline, and in addition the original and two copies must be mailed bearing a postmark no later than March 15, 1990. Proposals may be hand delivered up to this date to the Library Development Division, Lorenzo de Zavala Archives and Library Building, 1201 Brazos Street, Austin, on any weekday between 8 a.m. and 5 p.m.

Duration of Programs and Amount of Funding. Federal Library Services and Construction Act Title III funds in the amount of \$200,000 to \$300,000 are expected to be available. There is no specific allocation formula and no predetermined limitation on the amount per project. Because only proposals which are deemed to be of sufficient quality will be recommended for funding, some of the funds may remain ungranted. The duration of those projects which are funded is from September 1, 1990-August 31, 1991. The state Library reserves the right to accept or reject any or all proposals submitted and is under no legal requirement to execute any resulting contract on the basis of this advertisement, and provides this information only to fulfill the requirements of notification. Should the Texas State Library and Archives Commission award any contract(s), it will base its choice on the quality of the proposal, as assessed by the Library Services and Construction Act Advisory Council and library staff in accordance with the published grant application guidelines.

Contact. To receive a grant application guidelines packet, contact Dick Getz, Grants Coordinator, Library Development Division, Texas State Library, P.O. Box 12927, Austin, Texas 78711, (512) 463-5532.

Issued in Austin, Texas, on November 3, 1989.

TRD-8910634 Raymond Hitt
Assistant State Librarian
Texas State Library and Archives
Commission

Filed: November 6, 1989

For further information, please call: (512) 463-5440

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 DKM Enterprises, No Permit on November 3, 1989, assessing \$10,000 in administrative penalties; \$8,700 in deferred penalties (to be waived pending compliance); and imposing stipulated administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William W. Thompson, III, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910637 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: November 6, 1989

For further information, please call: (512) 463-8069.

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 Trinidad, Permit Number 11393-01, on November 3, 1989, imposing stipulated penalties.

Information concerning any aspect of this order may be obtained by contacting Geof Meyer, enforcement coordinator, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910638 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: November 6, 1989

For further information, please call: (512) 463-8069.

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 October 30-November 3, 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 applica-

tion. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed 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.

Alvin Independent School District; Manvel Sewage Treatment Plant; northeast of the intersection of State Highway 6 and FM Road 1128 in the City of Manvel in Brazoria County; 11251-01; renewal.

City of Arp; wastewater treatment facility; approximately 1/2 mile south of the intersection of State Highway 135 and State Highway Spur 80 and approximately one mile northeast of the intersection of State Highway 135 and FM Road 345 in Smith County; 10511-01; amendment.

City of Boyd; wastewater treatment facility; approximately 0.5 mile east of FM Road 730 and approximately 0.25 mile north of State Highway 114 in Wise County; 10131-01; renewal.

City of Elsa; wastewater treatment facility; on Austin Street, approximately 250 feet north of Thirteenth Street in the City of Elsa, Hidalgo County; 11510-01; renewal.

Fina Oil and Chemical Company; Big Spring; wastewater treatment facility for Big Spring Refinery and Petrochemical Plant; north of and adjacent to Interstate Highway 20, at a site adjacent to the east city limits of the City of Big Spring, Howard County; 01768; amendment.

First South Savings Association; Houston; wastewater treatment facility; 1,000 feet southwest of the intersection of Rankin Road and Aldine-Westfield Road in Harris County; 12913-01; renewal.

Harris County Water Control and Improvement District Number 89; Houston; Morningside Place Wastewater Treatment Facility; north of Fellows Road, approximately 3,600 feet west of the intersection of Fellows Road and FM Road 518 (Cullen Boulevard) in Harris County; 12939-01; renewal.

City of Houston; wastewater treatment facility; adjacent to and east of the intersection of Central Street and Galveston Road in southeast Houston, Harris County; 10495-120; amendment.

Pecan Grove Municipal Utility District; Houston; wastewater treatment facility; 1504 Skinner Lane (FM Road 359), approximately 1.5 miles north of United States Highway 90A and approximately 500 feet east of FM Road 359 in Fort Bend County; 11655-01; renewal.

Rowland School of Ballet and Gymnastics, Inc.; Kingwood; wastewater treatment facility; approximately 800 feet south of North Park Drive and 900 feet east of Russell Palmer Road in Montgomery County; 12727-01; renewal.

Royal Independent School District; Brookshire, wastewater treatment facility; 2520 Durkin Road, in the City of Brookshire, in Waller County; 10873-01; renewal.

Southwestern Electric Power Company; Longview; Class I non-hazardous industrial solid waste storage and transfer facility; 1221 Karnes Road on a 19.5-acre site on west side of Karnes Road (aka FM Road 1845), 0.1 mile south of its intersection with FM Road 2205 and approximately 0.9 mile north of its intersection with Highway 259, in Longview, Gregg County; SW-39080; amended new.

State Department of Highways and Public Transportation; Fort Worth; Johnson County Rest Area-Northbound Lane Sewage Treatment Plant; on the northbound right-of-way of Interstate Highway 35W, approximately 0.8 miles north of the intersection of Interstate Highway 35W and FM Road 917 in Johnson County; 12951-01; renewal.

City of Three Rivers; renewal 10301-01; wastewater treatment facility; approximately 900 feet southwest of the intersection of State Highway 72 and Avenida Street in the City of Three Rivers in Live Oak County.

United States Army Corps of Engineers; Wylie; Caddo Park Wastewater Treatment Facility; in Caddo Park on the northeastern side of Lake Lavon, approximately 2.3 miles east of the intersection of U.S. Highway 380 and State Highway 78 in Collin County; 12054-01; renewal.

United States Army Corps of Engineers; Wylie; Avalon Park Wastewater Treatment Facility; in Avalon Park, on the south side of Lake Lavon, and immediately northwest on Lavon Dam, approximately 2.5 miles northwest of the intersection of State Highway 78 and State Highway 205 in Collin County; 12055-01; renewal.

United States Army Corps of Engineers; Wylie; Cottonwood Park Wastewater Treatment Facility; in Cottonwood Park, on the east side of Lake Lavon, approximately one mile southwest of the intersection of State Highway 78 and State Highway Spur 509 in Collin County; 12056-01; renewal.

United States Army Corps of Engineers; Wylie, Little Ridge Park Wastewater Treatment Plant; in Little Ridge Park, on the east side of Lake Lavon approximately 1.7 miles west of the intersection of State Highway 78 and State Highway Spur 509 in Collin County; 12057-01; renewal.

United States Army Corps of Engineers; Wylie; Lavonia Park Wastewater Treatment Facility; in Lavonia Park, immediately northeast of Lavon Dam, on the southeast side of Lake Lavon, at a point approximately 1.4 miles southwest of the intersection of State Highway 78 and FM Road 6 in Collin County; 12061-01; renewal.

United States Army Corps of Engineers; Clifton; Whitney Lake Powerhouse Sewage Treatment Plant; at the Whitney Lake Dam Powerhouse, approximately 1.0 mile east of the intersection of State Highway 22 and FM 56 in Bosque County; 12087-01; renewal.

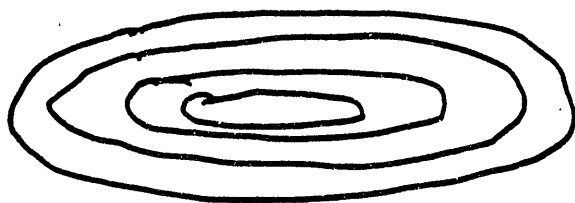
West Harris County Municipal Utility District Number 17; Houston; wastewater treatment facility; approximately five miles west-northwest of the intersection of State Highway 6 and IH 10, on the northern bank of South Mayde Creek in western Harris County; 12247-01; renewal.

Issued in Austin, Texas, on November 6, 1989.

TRD-8910836 Brenda W. Foster
Chief Clerk
Texas Water Commission

Filed: November 6, 1989

For further information, please call: (512) 463-7906



1989 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the August, September, and October 1989 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
Friday, November 3	THIRD QUARTERLY INDEX	
Tuesday, November 7	Wednesday, November 1	Thursday, November 2
Friday, November 10	Monday, November 6	Tuesday, November 7
Tuesday, November 14	Wednesday, November 8	Thursday, November 9
Friday, November 17	Monday, November 13	Tuesday, November 14
Tuesday, November 21	Wednesday, November 15	Thursday, November 16
Friday, November 24	Monday, November 20	Tuesday, November 21
Tuesday, November 28	NO ISSUE PUBLISHED	
Friday, December 1	Monday, November 27	Tuesday, November 28
Tuesday, December 5	Wednesday, November 29	Thursday, November 30
Friday, December 8	Monday, December 4	Tuesday, December 5
Tuesday, December 12	Wednesday, December 6	Thursday, December 7
Friday, December 15	Monday, December 11	Tuesday, December 12
Tuesday, December 19	Wednesday, December 13	Thursday, December 14
Friday, December 22	Monday, December 18	Tuesday, December 19
Tuesday, December 26	Wednesday, December 20	Thursday, December 21
Friday, December 29	NO ISSUE PUBLISHED	